

# CHAPTER 15: Mandated Reporting of Abuse

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Providers of mental health services and others, including, in some cases, Patients' Rights Advocates, have the responsibility to report certain types of abuse under statutes or regulations.

## **ELDER AND DEPENDENT ADULT ABUSE**

### **REPORTING**

The Elder Abuse and Dependent Adult Civil Protection Act, California Welfare and Institutions Code Sections 15600 through 15637, contains the reporting requirements for abuse of elders and dependent adults. Abuse of an elder or dependent adult is a criminal act. (Penal Code Section 368)

"**Elder**" means a person 65 years of age or older.

"**Dependent Adult**" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. This includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

### **MANDATED REPORTERS**

Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult is a mandated reporter. This is regardless of whether or not he or she receives compensation. (Welfare and Institutions Code (WIC) 15630(a))

This includes;

- administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults;
- any elder or dependent adult care custodian;
- health practitioners;
- clergy members;
- employees of a county adult protective services agency or a local law enforcement agency.

**“Care Custodian”** means an administrator or an employee of many public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff. This includes, but is not limited to, licensed 24-hour health care facilities, community care centers and health agencies, as well as advocacy and ombudsmen offices or agencies. This also includes any other protective, public or private assistance or advocacy agency providing health services or social services to elders or dependent adults. (WIC 15610.17) Subsection (r) of this code section explicitly includes “Offices of patients' rights advocates and clients' rights advocates, including attorneys.”

**"Health Practitioner"** means a physician, psychiatrist, psychologist, dentist, resident intern, optometrist, podiatrist, chiropractor, licensed nurse (including registered and licensed vocational nurses), dental hygienist, licensed clinical social worker, marriage, family and child counselor and trainee or intern, an emergency medical technician I or II, paramedic, psychological assistant, state or county public health or social service employee who treats an elder or dependent adult for any condition, a coroner, or a religious practitioner who diagnoses, examines or treats elders or dependent adults. (WIC 15610.37)

**"Adult Protective Services Agency"** means a county welfare department, except person who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff. (WIC 15610.13)

**"Local Law Enforcement Agency"** means a city police or county sheriff's department, or a county probation department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff. (WIC 15610.47)

## **PERSONS PERMITTED BUT NOT REQUIRED TO REPORT**

Welfare and Institutions Code section 15631(a) permits, but does not require, reporting from any person who has knowledge of or reasonably suspects that an elder or dependent adult has been the victim of abuse.

## **MANDATED REPORTING**

A mandated reporter must file a report when they have observed or have knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse, or neglect. A report is also required when a mandated reporter reasonably suspects or is told by an elder or dependent adult that he or she has experienced behavior constituting physical

abuse, abandonment, abduction, isolation, financial abuse, or neglect. (WIC 15630(b))

**"Reasonable suspicion"** means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate from his or her training and experience, to suspect abuse. (WIC Section 15610.65)

## **TYPES OF REPORTABLE ELDER OR DEPENDENT ADULT ABUSE**

**"Abuse of an elder or a dependent adult"** means any of the following:

- Physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.
- The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.
- Financial abuse, as defined in Section 15610.30.

(WIC 15610.07)

**"Physical Abuse"** means all of the following (which are defined, where appropriate, in the Penal Code):

- Assault and/or Battery;
- Assault with a deadly weapon or force likely to produce great bodily injury;
- Unreasonable physical constraint, or prolonged or continual deprivation of food or water
- Sexual Assault or battery
- Rapes, including spousal rape
- Incest
- Sodomy, oral copulation or sexual penetration
- Lewd or lascivious acts
- Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:
  - For punishment.
  - For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in

the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.

- For any purpose not authorized by the physician and surgeon.

(WIC 15610.63)

**"Neglect"** means the negligent failure of a person having the care or custody of an elder or dependent adult to exercise that degree of care which a reasonable person in a like position would exercise. Neglect includes, but is not limited, to the following:

- Failure to assist in personal hygiene, or in the provision of food, clothing or shelter.
- Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
- Failure to protect from health and safety hazard.
- Failure to prevent malnutrition.
- Failure of an elder or dependent adult to satisfy the above needs for themselves due to poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

(WIC 15610.57)

**"Abandonment"** means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody. (WIC 15610.05)

**"Isolation"** means any of the following:

- Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.
- Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the expressed wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder

or dependent adult from having contact with family, friends, or concerned persons.

- False imprisonment, as defined in Section 236 of the Penal Code.
- Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.

(WIC 15610.43)

These acts do not constitute isolation if they are performed pursuant to the instructions of a physician and surgeon licensed to practice medicine in the state, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care. It also does not apply if these acts are performed in response to a reasonably perceived threat of danger to property or physical safety. (WIC 15610.43)

**“Abduction”** means the removal from this state and/or the restraint from returning to this state of any elder or dependent adult who does not have the capacity to consent to the removal from this state and/or the restraint from returning to this state. It also includes the removal from this state and/or the restraint from returning to this state of any person under conservatorship without the consent of the conservator or the court. (WIC 15610.06)

**“Financial Abuse”** of an elder or dependent adult occurs when a person or entity does any of the following:

- Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. It is also financial abuse if a person assists in these acts or causes them by undue influence.
  - A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.
- Takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

(WIC 15610.30)

## **REPORTING PROCEDURE**

Known or suspected instances of elder or dependent adult abuse shall be reported immediately, or as soon as practically possible, by telephone or through using a confidential Internet reporting tool. If the report is made by telephone, a written report needs to be sent or made through the Internet within two working days. (WIC 15630(b)(1))

If the suspected or alleged abuse is physical abuse, occurred in a long-term care facility, and results in serious bodily injury, all of the following must be done;

- a telephone report shall be made immediately to law enforcement,
- a written report needs to be made within two hours to;
  - local ombudsman,
  - the corresponding licensing agency,
  - the local law enforcement agency

If the suspected or alleged abuse is physical abuse and occurred in a long-term care facility, but did not result in serious bodily injury, the above reports are required within 24 hours. If the suspected abuse, which did not result in serious bodily injury, was allegedly caused by a resident with dementia, the report can be sent to either the local ombudsmen or local law enforcement agency. (WIC 15630(b)(1)(A))

These requirements do not apply to suspected or alleged abuse that occurs in a state mental health hospital or state developmental center. Suspected or alleged abuse that occurs in state hospitals or development centers are subject to different reporting guidelines and requirements. (WIC 15630(a)(1)(E))

If the suspected abuse has occurred in any place other than a long-term care facility, a state mental hospital, or a state developmental center, the report shall be made to the adult protective services agency or the local law enforcement agency.

The report should include (if known):

- the name of the person making the report,
- the name and age of the elder or dependent adult,
- the present location of the elder or dependent adult,
- the names and addresses of family members or any other person responsible for the elder or dependent adult's care,



- the nature and extent of the elder or dependent adult's condition,
- the date of the incident,
- any other information, including information that led the reporter to suspect elder or dependent adult abuse, requested by the agency receiving the report.

(WIC 15630[e])

## **DISCRETIONARY REPORTING**

Any mandated reporter who has knowledge of, or reasonably suspects that, types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse. (WIC 15630(c)[1])

## **IMMUNITY**

No care custodian, clergy member, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective services agency or a local law enforcement agency who reports a known or suspected instance of abuse of an elder or dependent adult shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of abuse of an elder or dependent adult shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. (WIC 15634[a])

## **SANCTIONS**

Any person who fails to report an instance of elder or dependent adult abuse, as required by this article, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, by a fine of not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment. (WIC 15630(h))

## **EMPLOYEE ACKNOWLEDGEMENT OF REPORTING OBLIGATIONS**

Any person who enters into employment on or after January 1, 1995, as a care custodian, clergy member, health practitioner, or with an adult protective services agency or a local law enforcement agency, prior to commencing his or her employment and as a prerequisite to that employment, shall sign a statement on

a form that shall be provided by the prospective employer, to the effect that he or she has knowledge of Section 15630 and will comply with its provisions. (WIC Section 15659[a])

## **CHILD ABUSE AND NEGLECT**

### **DUTY TO REPORT**

California's Child Abuse and Neglect Reporting Act, Penal Code Sections 11164 through 11174.3, require certain persons including a "child care custodian" or "health practitioner" (including both medical and nonmedical practitioners) who has knowledge of or observes a child (defined as a person under age 18) in his/her professional capacity or within the scope of his/her employment whom he/she reasonably suspects has been the victim of child abuse, to report such suspected instances of child abuse to a "child protective agency" immediately or as soon as practically possible by telephone and within 36 hours by a written report.

### **MANDATED REPORTING**

Reporting is required by certain person when they have knowledge of or observe a child whom they know or reasonably suspect has been the victim of child abuse.

"...reasonable suspicion means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect." (Penal Code (PC) 11166(a)(1))

### **MANDATED REPORTERS**

Penal Code Section 11165.7 lists dozens of different types of professionals who are mandated reporters of child abuse or neglect. This list includes, but is not limited to, employees and administrators of schools, youth centers and youth organizations, health care providers, and law enforcement agencies. Many employers of mandated reporters are required to provide training in identifying and reporting child abuse and neglect. While certain volunteers are not considered mandated reports, they are still encouraged to undergo training and to report known or suspected instances of child abuse or neglect.



## **TYPES OF REPORTABLE CHILD ABUSE**

**“Child Abuse or Neglect”** is defined as:

- A physical injury or death inflicted by other than accidental means upon a child by another person;
- Sexual abuse of a child, including sexual assault, sexual exploitation, and commercial sexual exploitation;
- Neglect of a child;
- The willful harming or injuring of a child or the endangering of the person or health of a child;
- Unlawful corporal punishment or injury of a child.

(PC 11165.6)

**"Sexual Assault"** means conduct in violation of the Penal Code including rape, statutory rape, rape in concert, incest, sodomy, oral copulation, lewd or lascivious acts upon a child, sexual penetration, or child molestation. (PC 11165.1(a-b))

**"Sexual Exploitation"** refers to any of the following:

Conduct involving any matter depicting a minor engaged in obscene acts, which violates the law prohibiting the preparation, sale, or distribution of obscene matter or employment of minors to perform obscene acts.

A person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or a person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct.

A person who depicts a child in, or who knowingly develops, duplicates, prints, downloads, streams, accesses through any electronic or digital media, or exchanges, a film, photograph, videotape, video recording, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies for the purpose of investigating and prosecuting criminal offenses.

(PC 11165.1(c))

**“Commercial Sexual Exploitation”** refers to the sexual trafficking of a child or the provision of food, shelter, or payment to a child in exchange for the performance of any sexual act. (PC 11165.1(d))

**"Neglect"** means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person. (PC 11165.2)

**"Severe Neglect"** means:

The negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive."

Those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(PC 11165.2(a))

**“General Neglect”** means, "the failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care or supervision where no physical injury to the child has occurred. (PC 11165.2(b))

It should be noted that a child receiving treatment by spiritual means or not receiving specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect. (PC 11165.2)

**“Willful Harming or Injuring of a Child or the Endangering of the Person or Health of a Child”** means a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered. (PC 11165.3)

**"Unlawful Corporal Punishment or Injury"** means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary to quell a disturbance threatening physical injury to

person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil. It also does not include the exercise of the degree of physical control necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning. It also does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer. (P.C. Section 11165.4)

## **MANDATED CHILD ABUSE REPORTING PROCEDURE**

A mandatory reporter can fulfill the reporting requirements by telephone report, followed by a written report, which must be made to a "child protective agency," which means a police or sheriff's department, a county probation department, or a county welfare department. School district police or security departments are not considered "child protective agencies".

### **TELEPHONE REPORT**

A telephone report must be made immediately or as soon as is practically possible after receiving the information concerning the incident. (P.C. Section 11166(a))

The oral report should include:

- The name of the person making the report.
- The name of the child.
- The present location of the child.
- The nature and extent of the injury.
- Any other information requested by the child protective agency, including information that led the person to suspect child abuse.

Written Report The state Department of Justice has adopted a form, "Suspected Child Abuse Report," form BCIA 8572, [https://oag.ca.gov/sites/all/files/agweb/pdfs/childabuse/ss\\_8572.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/childabuse/ss_8572.pdf) which must be used for the written report. This form is for use by mandated reporters, as defined in Penal Code Section 11165.7, to notify a reporting agency (local law enforcement, county probation or county welfare department) about suspected cases of child abuse.

## **DISCRETIONARY REPORTING**

Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, may make a report to a police or sheriff's department (excluding school district police or security departments), county probation department (if designated to receive such reports), or county welfare department. (PC 11166.05)

## **PRIVILEGES**

Neither the physician-patient privilege nor the psychotherapist-patient privilege applies to information reported pursuant to this statute in a court proceeding or administrative hearing. (P.C. Section 11171.2(b))

## **IMMUNITY**

No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and this immunity shall apply even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect outside of his or her professional capacity or outside the scope of his or her employment. (P.C. Section 11172(a))

## **APPLICABLE LAWS & REGULATIONS**

Child Abuse and Neglect Reporting Act

- California Penal Code 11164 – 11174.3
- Elder Abuse and Dependent Adult Abuse Civil Protection Act
- California Welfare & Institutions Code 15600–15675
- Protective Placements and Custody of Endangered Adults
- California Welfare & Institutions Code 15700–15705.40
- Protective Services
- California Welfare & Institutions Code 15703–15705.40
- Crimes against Elders, Dependent Adults and Persons with Disabilities
- California Penal Code 368 – 368.7