

**DEPARTMENT OF SOCIAL SERVICES**  
744 P Street, Sacramento, California 95814



January 20, 1995

**ALL-COUNTY LETTER NO. 95-02**

TO: ALL-COUNTY WELFARE DIRECTORS  
ADULT PROTECTIVE SERVICES  
(APS) PROGRAMS

**REASON FOR THIS TRANSMITTAL**

- State Law Change
- Federal Law or Regulation Change
- Court Order or Settlement Agreement
- Clarification Requested by One or More Counties
- Initiated by CDSS

**SUBJECT: ELDER AND DEPENDENT ADULT ABUSE REPORTING LAW**

SB1681

Senate Bill (SB) 1681 (Chapter 594, Statutes of 1994) was signed into law by the Governor on September 15, 1994, and became effective on January 1, 1995. This legislation recodifies and recasts the provisions of the elder and dependent adult abuse reporting law of the Welfare and Institutions Code (W&IC) Section 15600 et al. Also, the legislation adds to the list of mandated reporters of physical abuse, defines additional terms for purposes of the law, and authorizes the reporting of abuse to the State Department of Mental Health or the State Department of Developmental Services when the abuse occurs in a state mental hospital or a state developmental center respectively. Other revisions help minimize scare agency cross-reporting activities by Adult Protective Services agencies.

Recasting of the provisions of the law integrates certain code sections under new Articles, thereby streamlining the law for easier reference by public and private agencies, health and social services providers, facility employers and employees, and organizations, and include the following Articles 2. through 10.:

2. Definitions
3. Mandatory and Nonmandatory Reports of Abuse
4. Confidentiality
5. Local Agency Cross-Reporting
6. Investigation of Reports
7. Interagency Coordination
8. Prosecution of Elder and Dependent Adult Abuse Cases
9. Reporting Forms
10. Employee Statement

Additional mandated reporters are included under the definition of "Care custodian," (W&IC 15610.17), meaning administrator or an employee of the following: Agencies providing publicly funded In-Home Supportive Services; Independent living centers; Alzheimer's Disease day care resource centers; Vocational rehabilitation facilities and work activity centers (formerly "sheltered workshops"); Offices of public conservators, public guardians, and clients' rights advocates, including attorneys; Offices of public conservators, public guardians, and court investigators; protection and advocacy agencies/persons appointed/contracted for under federal legislation for developmentally disabled and mentally ill individuals.

New terms for purposes of provisions of the reporting law are defined, and include: "long-term care facility;" "reasonable suspicion;" and "multidisciplinary personnel team".

Under the new law, mandated reporters must now report suspected abuse occurring in a state mental health hospital or a state developmental center to designated investigators of the State Department of Mental or the State Department of Developmental Services or to the local law enforcement agency. Currently, mandated reporters report suspected abuse to the local ombudsman program or to a local law enforcement agency. County Adult Protective Services (APS) agencies will continue to accept reports of abuse of developmentally disabled and mentally ill persons when they are in their own homes, and should coordinate these cases with Regional Centers and County Departments of Mental Health.

Under W&IC 15640 (a) (1), "Local Agency Cross-Reporting," APS agencies need to report by telephone to local law enforcement agencies only cases of any known or suspected instance of criminal activity, which replaces the current requirement of reporting every case of suspected physical abuse. However, APS agencies must continue to telephone every instance of physical abuse to any public agency which would have responsibility for investigation, including licensing agencies. APS agencies will be required to also send a written report within two working days of receiving the abuse incident to each agency to which a telephone report is required as above.

Only a written report of possible criminal activity, sent within two working days, will be required to be sent to a local law enforcement agency by the APS program in a case of abuse other than physical abuse.

The "California State Guidelines for County Adult Protective Services Abuse Investigations" will continue to be maintained by this department in cooperation with representatives of county government, and in consultation with other concerned state departments, as provided under W&IC 15653 (a).

Added to the abuse reporting law is a section (W&IC 15656 (a)) titled "Prosecution of Elder and Dependent Adult Abuse Cases" which is a repeat of the language in Penal

Code Section 368, commonly referred to by law enforcement agencies. Inclusion of the above in the W&I Code is for quicker reference for investigators, and is a reminder of the criminal nature of abuse of elders and dependent adults.

One area of challenge for APS staff has been the difficulty in serving frail elder persons who may, upon initial contact, give indications of incompetence which often is only temporary confusion due to disruption in their lives, fear of being removed from the home, and an unwillingness to report on abuse by family caregivers. As you know, often a trust must be developed by APS staff with the frail elder in order to provide needed assistance in services intervention. While mindful of the foregoing, APS staff must also continue to be aware that any victim of elder or dependent adult abuse may refuse or withdraw consent at any time to an investigation or provision of protective services by an APS agency as provided under W&IC 15636 (a).

As follow-up to the above, W&IC 15636 (b) provides that if an elder or dependent adult abuse victim is so incapacitated that she or he cannot legally give or deny consent to services, a petition for temporary conservatorship or guardianship may be initiated in accordance with Section 2250 of the Probate Code.

Also, when the victim is obviously mentally disordered, a referral may be made to the local mental health agency for detention, as an emergency measure, under W&IC 5150, "Detention of Mentally Disordered Persons for Evaluation and Treatment."

You may wish to make changes in copies of the "Minimum Guidelines for Abuse Investigations" based on information provided in this letter, particularly in sections related to agency cross-reporting and the list of mandated reporters, for future reference.

A letter of notification of changes in the abuse reporting law will be sent by the department to various provider health and social service organizations, and professional associations.

The legislation, SB 1681, is available for your reference at the California Legislative Information website: [http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb\\_1651-1700/sb\\_1681\\_bill\\_940916\\_chaptered](http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb_1651-1700/sb_1681_bill_940916_chaptered). Questions or comments concerning this letter, or related to APS, may be directed by telephone to Policy & Quality Assurance Branch, at (916) 651-5362.

Sincerely,



CAROL R. WYDEIMON

Deputy Director  
Adult Services Division