

ELDER/DEPENDENT ADULT ABUSE REPORTING REQUIREMENTS

What constitutes elder/dependent adult abuse? [Welfare and Institutions Code (WIC) § 15610.07] Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering. It also includes deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

Types of abuse:

- **Physical:** Direct beatings, lack of medical care or overmedication, sexual exploitation
- **Abandonment:** Desertion or willful forsaking by anyone having responsibility for care
- **Isolation:** Preventing a dependent adult from receiving mail, telephone calls, visitors
- **Financial:** Theft, misuse of funds or property, extortion, duress, fraud
- **Neglect:** Denial of food, clothing, shelter, health care. Or unable to provide basic needs
- **Self-neglect:** Malnutrition, being unkempt, unmet medical needs, unpaid bills
- **Mental suffering:** Verbal assaults, threats, fear

Signs of trouble

The following items are possible warning signs that abuse might be occurring to an older or disabled adult. If you observe some or all of these occurring with an older or disabled adult you know, consider alerting Adult Protective Services.

- Injury that is inconsistent with the explanation for its cause
- The elder or dependent adult has recently become confused or disoriented
- The caregiver shows anger, indifference, aggressive behavior toward the person
- Personal belongings, papers, credit cards are missing
- Hesitation from the elder to talk openly
- The caregiver has a history of substance abuse, mental illness, criminal behavior or family violence
- Lack of necessities, such as food, water, utilities, medications and medical care
- Another person's name added to the client's bank account or important documents, or frequent checks made out to **CASH**

Who is an elder? [WIC § 15610.27]. "Elder" means any person residing in this state, 65 years of age or older.

Who is a dependent adult? [WIC §15610.23. (a)] "Dependent adult" means any person between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that 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.

Who is a mandated reporter? [WIC § 15630(a)] "Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, **or any** elder or dependent adult care custodian, health practitioner, **clergy member**, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter."

Penitential communication exception. [WIC§ 15630(b)(2)(A)] **There is no duty to report where the knowledge of abuse was acquired in a penitential communication.** For purposes of this subdivision, “penitential communication” means a communication that is **intended to be in confidence, including, but not limited to, a sacramental confession** made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization is authorized or accustomed to hear those communications and under the discipline tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

What degree of knowledge triggers the duty to report? [WIC §15610.65] “Reasonable suspicion” means an objectively reasonable suspicion that a person would entertain, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse. A clergy member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have care or custody of an elder or dependent adult shall not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care. [WIC §15630(b)(2)(C)]

To whom do I report? [WIC § 15630(b)(1)] Report to adult protective services (in San Diego County: 800-510-2020; in Imperial County: 760-337-6800) **If the situation is life threatening, call 911.** A follow-up written report should be made within 2 days of the telephonic report.

What should be in the report? [WIC § 15630(e)]: 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 adult responsible for the elder’s or dependent adult’s care, the nature and extent of the elder’s or dependent adult’s condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, as requested by the agency receiving the report.

Can I rely on the report of another person to satisfy my reporting obligation [WIC § 15630(d)]: No. The rule is the same as for child abuse. A joint report may be made only where there is an agreement to submit a single report on behalf of more than one person. Whenever a mandated reporter has knowledge of possible elder abuse, he or she should make a report, or be listed as a joint reporter on the report of another.

What is the penalty for failure to report elder abuse? [WIC § 15630(h)] Failure to report elder abuse is a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment. If the failure is willful, and the abuse results in death or great bodily injury, the penalty is up to a year in a county jail, a fine of up to five thousand dollars (\$5,000), or both. If there is an intentional concealment of severe elder abuse or neglect, the failure to report is a continuing offense until a law enforcement agency discovers the offense.

Is the identity of the reporter kept confidential? [WIC § 15633(a)] With limited exceptions, yes. The identity of any mandated reporter who makes a report is kept confidential, and can only be revealed to the agency(ies) investigating the incident, to a prosecutor, or by court order.

Does the mandatory reporter have any immunity? [WIC § 15634(a)] Yes. A mandated reporter has immunity from both civil and criminal liability for a) any report required or authorized by the mandatory reporter law; b) providing access to the suspected victim by a government agency investigating a report of child abuse or neglect; c) taking photographs of the suspected victim, even without parental consent; d) including the photos in the mandated written report. **There is no immunity for any use of the photographs other than as part of a mandated written report.** **COMMENT:** Due to the risk of improper dissemination of photographs, it is recommended that photos not be taken or included in a written report, except in rare instances where the photos have significant evidentiary value and the subject matter of the photos is liable to disappear before the investigating agency can take its own photos.

Can a mandated reporter recover attorney fees incurred in defending a civil suit from a report? [WIC § 15634(c)] Yes, where the reporter a) prevails in a civil action b) which is resolved by a formal court proceeding, e.g. a demurrer, a motion for summary judgment, or a trial. The statute does not provide for recovery of attorney fees where the matter is resolved in a mediation, settlement conference, or other voluntary, alternative dispute resolution proceeding.