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DAILY REPORT

Lawmakers push for elder abuse reforms

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Citing the difficulty in prosecuting elder abuse, state and local officials are proposing reforms that will streamline the reporting of cases and make it easier to obtain convictions.

Assemblywoman Mariko Yamada, D-Davis, recently introduced AB 40, which would require mandated reporters to inform both an ombudsman and local law enforcement when they suspect abuse. Currently, mandated reporters – which include employees at nursing homes

and social, health, and law enforcement workers – are only required to report cases to one of the two agencies.

Another bill, SB 558, introduced in February by Sen. Joe Simitian, D-Palo Alto, would change the burden of proof in elder abuse cases, which are often prosecuted as civil cases, not criminal ones. The bill lowers the burden of proof from "clear and convincing evidence" to a "preponderance of evidence."

The bills introduced this year indicate many state officials believe current laws aren't aggressive enough. According to California Advocates for Nursing Home Reform, 96 percent of physical, sexual and mental abuse cases involving seniors result in a citation of \$1,000 or less and many cases are reported to prosecutors years after the fact.

The elder abuse issue gained momentum last month, when law enforcement, state agencies, elder advocates and nursing home operators testified at an assembly hearing in Sacramento. Led by Yamada and Tom Ammiano, D-San Francisco, the hearing was meant to shed light on California's shortcomings in dealing with elder abuse and make the case for bills such as AB 40.

Of the more than 1,400 elder abuse complaints that the state ombudsman office received last year, only 56 cases were reported to the state attorney general's office, said Mark Zahner of the Attorney General's Bureau of Medi-Cal Fraud and Elder Abuse. [California Watch reported](#) that under former Attorney General Jerry Brown, the state filed fewer elder abuse cases and orders for restitution than under the previous attorney general.

Last week, testimony at a [federal hearing and a report](#) focused on abuse, neglect and financial exploitation made it clear the majority of states are facing similar problems.

In the federal report, 20 states that responded to a survey said "obtaining assistance from law enforcement in investigating alleged elder abuse cases poses a very great or great challenge for them." Out of 35 respondents, 23 agreed that "few, if any, of all substantiated elder abuse cases referred to law enforcement authorities are prosecuted."

At the state hearing, Patricia McGinnis, the executive director of California Advocates for Nursing Home Reform, said her group strongly supports Yamada's elder abuse reporting bill but that "law enforcement's involvement in nursing homes is weak."

In an interview with California Watch, she said victims are discouraged from pursuing complaints because most attorneys won't take on elder abuse and neglect cases given how difficult they are to prove.

Paul Greenwood, a deputy district attorney who runs the the Elder Abuse Prosecution Unit in San Diego, said his department has prosecuted more cases in recent years. But elder abuse cases are not enough of a priority for law enforcement agencies throughout the state, he said. Out of 58 counties, about 18 have designated elder abuse prosecutors, Greenwood said. He said every county should have its own elder abuse prosecution unit.

"The problem is when law enforcement try to enforce, their reaction is that it's a civil matter – not something we get involved in," he said, adding that law enforcement officers often refuse to take a crime report. "The member of the public gives up."

While he supports Yamada's elder abuse reporting bill, he said reforms should go even further. Greenwood believes elder abuse crimes should be considered a strike under California's three strikes law.

"I think the time has come for us to seriously consider that," he said.

The three strikes law, passed in 1994, increases prison sentences for people with prior convictions for violent or serious felonies and limits their ability to get punishment other than a prison sentence. The law has been criticized for overcrowding the state's prisons and unfairly sentencing non-violent repeat offenders to long prison terms.

"If you threaten an elder with terrorist words or threats, that's a strike. But if you steal \$100,000 dollars from an elder, that's not a strike," Greenwood said. "That seems to me inconsistent."

In a separate interview, he emphasized that the idea was purely his own and not the view of his office. "I'm not getting any kind of blessing on this from anyone," he said.

The idea has received some positive response. Robert MacLaughlin, a consultant to the Assembly committee on Aging and Long-term Care said Yamada "is very open to that idea. I think she saw it as an important deterrent."

Yamada has been warning the public of the "silver tsunami" headed to California. Californians aged 65 or older are projected to be the fastest-growing age group between 2000 and 2020, according to the Center for Budget Policy. By 2020, California will be home to the largest population of older adults in the United States.

"Unprecedented growth in our senior community also increases the potential for crimes against our elders," Yamada said at the hearing.

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