

AMENDED IN SENATE AUGUST 3, 2010

AMENDED IN SENATE JUNE 22, 2010

AMENDED IN SENATE MAY 3, 2010

AMENDED IN SENATE JULY 23, 2009

AMENDED IN SENATE JUNE 25, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 435**

**Introduced by Committee on Accountability and Administrative Review (De La Torre (Chair), Audra Strickland (Vice Chair), Arambula, Tom Berryhill, Block, Buchanan, Caballero, Emmerson, Fletcher, Huber, Jones, Bonnie Lowenthal, V. Manuel Pérez, and Villines)**

February 24, 2009

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An act to amend Sections 4514, 4629, 4731, and 5328 of, and to add ~~Division 4.8 (commencing with Section 4910)~~ *Section 4637* to, the Welfare and Institutions Code, relating to developmental services, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 435, as amended, Committee on Accountability and Administrative Review. Regional centers: whistleblower protection: related-party transactions.

Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to allocate funds to private nonprofit regional centers for the provision of

community services and support for persons with developmental disabilities and their families. Existing law sets forth the duties of regional centers, including, but not limited to, development of individual program plans, the purchase of needed services and supports to implement the plan, and the monitoring of services.

Existing law authorizes the department to adopt and enforce conflict-of-interest regulations to ensure that members of the governing board, program policy committees, and employees of regional centers make decisions that are in the best interest of consumers and the families of consumers.

~~Existing law, the California Whistleblower Protection Act, sets forth the circumstances and procedures under which a state employee, as defined, may report improper governmental activities, as defined, or make a protected disclosure, as defined, to the State Auditor, and prohibits retaliation or reprisal against a state employee for these acts.~~

~~This bill would enact the Regional Center Whistleblower Protection Act, providing similar protections for regional center employees who report improper regional center activities, as defined, or make a protected disclosure, as defined, to the department or the Legislature. It would require the department to investigate complaints under these provisions, and would require remedial actions to be taken by regional centers when appropriate. The bill would establish a private cause of action to enforce these provisions. It would require that if a copy of a complaint filed with the employee's supervisor, manager, or regional center director is also filed with the department, the copy shall include a sworn statement, signed under penalty of perjury, that the facts are true, or believed to be true. By changing the definition of a crime, the bill would create a state-mandated local program. The bill would make certain acts of reprisal a crime, thereby imposing a state-mandated local program.~~

*Existing law authorizes the department to enter into 5-year contracts with regional centers, subject to annual appropriation of funds by the Legislature. The contracts will specify that each regional center include annual performance objectives that will meet certain standards. If a regional center fails to meet the performance standards, the department will require corrective action.*

*This bill would require, not later than July 1, 2011, that each contract with a regional center include steps the regional center will take to provide notice to staff and consumers that confidential reports of improper regional center activity, as defined, can be made directly to*

*the department. This bill would also require all regional center contracts be amended by July 1, 2011, to include the new provisions.*

*This bill would allow a regional center employee who files a complaint with the regional center pertaining to certain prohibited acts to file a copy of the complaint signed under penalty of perjury, with the department. Additionally, a person who retaliates against a regional center employee who has made a protected disclosure, as defined, shall be guilty of a misdemeanor punishable by a fine, imprisonment, or both, and shall, in a civil action, be liable for damages, as prescribed. By creating additional crimes, the bill would constitute a state-mandated local program.*

Existing law requires that specified information and records obtained in the course of intake, assessment, and the provision of services for persons with developmental disabilities and the provision of voluntary or involuntary services to persons with a mental illnesses remain confidential, with certain specified exceptions.

This bill would allow the release of the above information to the department for purposes of conducting an investigation pursuant to the bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 4514 of the Welfare and Institutions Code
- 2 is amended to read:
- 3 4514. All information and records obtained in the course of
- 4 providing intake, assessment, and services under Division 4.1
- 5 (commencing with Section 4400), Division 4.5 (commencing with
- 6 Section 4500), Division 6 (commencing with Section 6000), or
- 7 Division 7 (commencing with Section 7100) to persons with
- 8 developmental disabilities shall be confidential. Information and
- 9 records obtained in the course of providing similar services to

1 either voluntary or involuntary recipients prior to 1969 shall also  
2 be confidential. Information and records shall be disclosed only  
3 in any of the following cases:

4 (a) In communications between qualified professional persons,  
5 whether employed by a regional center or state developmental  
6 center, or not, in the provision of intake, assessment, and services  
7 or appropriate referrals. The consent of the person with a  
8 developmental disability, or his or her guardian or conservator,  
9 shall be obtained before information or records may be disclosed  
10 by regional center or state developmental center personnel to a  
11 professional not employed by the regional center or state  
12 developmental center, or a program not vendored by a regional  
13 center or state developmental center.

14 (b) When the person with a developmental disability, who has  
15 the capacity to give informed consent, designates individuals to  
16 whom information or records may be released, except that nothing  
17 in this chapter shall be construed to compel a physician,  
18 psychologist, social worker, marriage and family therapist, nurse,  
19 attorney, or other professional to reveal information that has been  
20 given to him or her in confidence by a family member of the person  
21 unless a valid release has been executed by that family member.

22 (c) To the extent necessary for a claim, or for a claim or  
23 application to be made on behalf of a person with a developmental  
24 disability for aid, insurance, government benefit, or medical  
25 assistance to which he or she may be entitled.

26 (d) If the person with a developmental disability is a minor,  
27 ward, or conservatee, and his or her parent, guardian, conservator,  
28 or limited conservator with access to confidential records,  
29 designates, in writing, persons to whom records or information  
30 may be disclosed, except that nothing in this chapter shall be  
31 construed to compel a physician, psychologist, social worker,  
32 marriage and family therapist, nurse, attorney, or other professional  
33 to reveal information that has been given to him or her in  
34 confidence by a family member of the person unless a valid release  
35 has been executed by that family member.

36 (e) For research, provided that the Director of Developmental  
37 Services designates by regulation rules for the conduct of research  
38 and requires the research to be first reviewed by the appropriate  
39 institutional review board or boards. These rules shall include, but

1 need not be limited to, the requirement that all researchers shall  
2 sign an oath of confidentiality as follows:

3

4

5

“ \_\_\_\_\_  
Date

6

7

8 As a condition of doing research concerning persons with  
9 developmental disabilities who have received services from \_\_\_\_  
10 (fill in the facility, agency or person), I, \_\_\_\_\_, agree to obtain the  
11 prior informed consent of persons who have received services to  
12 the maximum degree possible as determined by the appropriate  
13 institutional review board or boards for protection of human  
14 subjects reviewing my research, or the person’s parent, guardian,  
15 or conservator, and I further agree not to divulge any information  
16 obtained in the course of the research to unauthorized persons, and  
17 not to publish or otherwise make public any information regarding  
18 persons who have received services so those persons who received  
19 services are identifiable.

20 I recognize that the unauthorized release of confidential  
21 information may make me subject to a civil action under provisions  
22 of the Welfare and Institutions Code.

23

24

\_\_\_\_\_”  
Signed

25

26

27

28 (f) To the courts, as necessary to the administration of justice.

29 (g) To governmental law enforcement agencies as needed for  
30 the protection of federal and state elective constitutional officers  
31 and their families.

32 (h) To the Senate Committee on Rules or the Assembly  
33 Committee on Rules for the purposes of legislative investigation  
34 authorized by the committee.

35 (i) To the courts and designated parties as part of a regional  
36 center report or assessment in compliance with a statutory or  
37 regulatory requirement, including, but not limited to, Section  
38 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the  
39 Penal Code, Section 6502 of the Welfare and Institutions Code,

1 and Section 56557 of Title 17 of the California Code of  
2 Regulations.

3 (j) To the attorney for the person with a developmental disability  
4 in any and all proceedings upon presentation of a release of  
5 information signed by the person, except that when the person  
6 lacks the capacity to give informed consent, the regional center or  
7 state developmental center director or designee, upon satisfying  
8 himself or herself of the identity of the attorney, and of the fact  
9 that the attorney represents the person, shall release all information  
10 and records relating to the person except that nothing in this article  
11 shall be construed to compel a physician, psychologist, social  
12 worker, marriage and family therapist, nurse, attorney, or other  
13 professional to reveal information that has been given to him or  
14 her in confidence by a family member of the person unless a valid  
15 release has been executed by that family member.

16 (k) Upon written consent by a person with a developmental  
17 disability previously or presently receiving services from a regional  
18 center or state developmental center, the director of the regional  
19 center or state developmental center, or his or her designee, may  
20 release any information, except information that has been given  
21 in confidence by members of the family of the person with  
22 developmental disabilities, requested by a probation officer charged  
23 with the evaluation of the person after his or her conviction of a  
24 crime if the regional center or state developmental center director  
25 or designee determines that the information is relevant to the  
26 evaluation. The consent shall only be operative until sentence is  
27 passed on the crime of which the person was convicted. The  
28 confidential information released pursuant to this subdivision shall  
29 be transmitted to the court separately from the probation report  
30 and shall not be placed in the probation report. The confidential  
31 information shall remain confidential except for purposes of  
32 sentencing. After sentencing, the confidential information shall be  
33 sealed.

34 (l) Between persons who are trained and qualified to serve on  
35 “multidisciplinary personnel” teams pursuant to subdivision (d)  
36 of Section 18951. The information and records sought to be  
37 disclosed shall be relevant to the prevention, identification,  
38 management, or treatment of an abused child and his or her parents  
39 pursuant to Chapter 11 (commencing with Section 18950) of Part  
40 6 of Division 9.

1 (m) When a person with a developmental disability dies from  
2 any cause, natural or otherwise, while hospitalized in a state  
3 developmental center, the State Department of Developmental  
4 Services, the physician in charge of the client, or the professional  
5 in charge of the facility or his or her designee, shall release  
6 information and records to the coroner. The State Department of  
7 Developmental Services, the physician in charge of the client, or  
8 the professional in charge of the facility or his or her designee,  
9 shall not release any notes, summaries, transcripts, tapes, or records  
10 of conversations between the resident and health professional  
11 personnel of the hospital relating to the personal life of the resident  
12 that is not related to the diagnosis and treatment of the resident's  
13 physical condition. Any information released to the coroner  
14 pursuant to this section shall remain confidential and shall be sealed  
15 and shall not be made part of the public record.

16 (n) To authorized licensing personnel who are employed by, or  
17 who are authorized representatives of, the State Department of  
18 Health *Care* Services, and who are licensed or registered health  
19 professionals, and to authorized legal staff or special investigators  
20 who are peace officers who are employed by, or who are authorized  
21 representatives of, the State Department of Social Services, as  
22 necessary to the performance of their duties to inspect, license,  
23 and investigate health facilities and community care facilities, and  
24 to ensure that the standards of care and services provided in these  
25 facilities are adequate and appropriate and to ascertain compliance  
26 with the rules and regulations to which the facility is subject. The  
27 confidential information shall remain confidential except for  
28 purposes of inspection, licensing, or investigation pursuant to  
29 Chapter 2 (commencing with Section 1250) and Chapter 3  
30 (commencing with Section 1500) of Division 2 of the Health and  
31 Safety Code, or a criminal, civil, or administrative proceeding in  
32 relation thereto. The confidential information may be used by the  
33 State Department of Health *Care* Services or the State Department  
34 of Social Services in a criminal, civil, or administrative proceeding.  
35 The confidential information shall be available only to the judge  
36 or hearing officer and to the parties to the case. Names which are  
37 confidential shall be listed in attachments separate to the general  
38 pleadings. The confidential information shall be sealed after the  
39 conclusion of the criminal, civil, or administrative hearings, and  
40 shall not subsequently be released except in accordance with this

1 subdivision. If the confidential information does not result in a  
2 criminal, civil, or administrative proceeding, it shall be sealed after  
3 the State Department of Health *Care* Services or the State  
4 Department of Social Services decides that no further action will  
5 be taken in the matter of suspected licensing violations. Except as  
6 otherwise provided in this subdivision, confidential information  
7 in the possession of the State Department of Health *Care* Services  
8 or the State Department of Social Services shall not contain the  
9 name of the person with a developmental disability.

10 (o) To any board which licenses and certifies professionals in  
11 the fields of mental health and developmental disabilities pursuant  
12 to state law, when the Director of Developmental Services has  
13 reasonable cause to believe that there has occurred a violation of  
14 any provision of law subject to the jurisdiction of a board and the  
15 records are relevant to the violation. The information shall be  
16 sealed after a decision is reached in the matter of the suspected  
17 violation, and shall not subsequently be released except in  
18 accordance with this subdivision. Confidential information in the  
19 possession of the board shall not contain the name of the person  
20 with a developmental disability.

21 (p) To governmental law enforcement agencies by the director  
22 of a regional center or state developmental center, or his or her  
23 designee, when (1) the person with a developmental disability has  
24 been reported lost or missing or (2) there is probable cause to  
25 believe that a person with a developmental disability has  
26 committed, or has been the victim of, murder, manslaughter,  
27 mayhem, aggravated mayhem, kidnapping, robbery, carjacking,  
28 assault with the intent to commit a felony, arson, extortion, rape,  
29 forcible sodomy, forcible oral copulation, assault or battery, or  
30 unlawful possession of a weapon, as provided in Section 12020  
31 of the Penal Code.

32 This subdivision shall be limited solely to information directly  
33 relating to the factual circumstances of the commission of the  
34 enumerated offenses and shall not include any information relating  
35 to the mental state of the patient or the circumstances of his or her  
36 treatment unless relevant to the crime involved.

37 This subdivision shall not be construed as an exception to, or in  
38 any other way affecting, the provisions of Article 7 (commencing  
39 with Section 1010) of Chapter 4 of Division 8 of the Evidence  
40 Code, or Chapter 11 (commencing with Section 15600) and

1 Chapter 13 (commencing with Section 15750) of Part 3 of Division  
2 9.

3 (q) To the Youth Authority and Adult Correctional Agency or  
4 any component thereof, as necessary to the administration of  
5 justice.

6 (r) To an agency mandated to investigate a report of abuse filed  
7 pursuant to either Section 11164 of the Penal Code or Section  
8 15630 of the Welfare and Institutions Code for the purposes of  
9 either a mandated or voluntary report or when those agencies  
10 request information in the course of conducting their investigation.

11 (s) When a person with developmental disabilities, or the parent,  
12 guardian, or conservator of a person with developmental disabilities  
13 who lacks capacity to consent, fails to grant or deny a request by  
14 a regional center or state developmental center to release  
15 information or records relating to the person with developmental  
16 disabilities within a reasonable period of time, the director of the  
17 regional or developmental center, or his or her designee, may  
18 release information or records on behalf of that person provided  
19 both of the following conditions are met:

20 (1) Release of the information or records is deemed necessary  
21 to protect the person's health, safety, or welfare.

22 (2) The person, or the person's parent, guardian, or conservator,  
23 has been advised annually in writing of the policy of the regional  
24 center or state developmental center for release of confidential  
25 client information or records when the person with developmental  
26 disabilities, or the person's parent, guardian, or conservator, fails  
27 to respond to a request for release of the information or records  
28 within a reasonable period of time. A statement of policy contained  
29 in the client's individual program plan shall be deemed to comply  
30 with the notice requirement of this paragraph.

31 (t) (1) When an employee is served with a notice of adverse  
32 action, as defined in Section 19570 of the Government Code, the  
33 following information and records may be released:

34 (A) All information and records that the appointing authority  
35 relied upon in issuing the notice of adverse action.

36 (B) All other information and records that are relevant to the  
37 adverse action, or that would constitute relevant evidence as  
38 defined in Section 210 of the Evidence Code.

39 (C) The information described in subparagraphs (A) and (B)  
40 may be released only if both of the following conditions are met:

1 (i) The appointing authority has provided written notice to the  
2 consumer and the consumer's legal representative or, if the  
3 consumer has no legal representative or if the legal representative  
4 is a state agency, to the clients' rights advocate, and the consumer,  
5 the consumer's legal representative, or the clients' rights advocate  
6 has not objected in writing to the appointing authority within five  
7 business days of receipt of the notice, or the appointing authority,  
8 upon review of the objection has determined that the circumstances  
9 on which the adverse action is based are egregious or threaten the  
10 health, safety, or life of the consumer or other consumers and  
11 without the information the adverse action could not be taken.

12 (ii) The appointing authority, the person against whom the  
13 adverse action has been taken, and the person's representative, if  
14 any, have entered into a stipulation that does all of the following:

15 (I) Prohibits the parties from disclosing or using the information  
16 or records for any purpose other than the proceedings for which  
17 the information or records were requested or provided.

18 (II) Requires the employee and the employee's legal  
19 representative to return to the appointing authority all records  
20 provided to them under this subdivision, including, but not limited  
21 to, all records and documents or copies thereof that are no longer  
22 in the possession of the employee or the employee's legal  
23 representative because they were from any source containing  
24 confidential information protected by this section, and all copies  
25 of those records and documents, within 10 days of the date that  
26 the adverse action becomes final except for the actual records and  
27 documents submitted to the administrative tribunal as a component  
28 of an appeal from the adverse action.

29 (III) Requires the parties to submit the stipulation to the  
30 administrative tribunal with jurisdiction over the adverse action  
31 at the earliest possible opportunity.

32 (2) For the purposes of this subdivision, the State Personnel  
33 Board may, prior to any appeal from adverse action being filed  
34 with it, issue a protective order, upon application by the appointing  
35 authority, for the limited purpose of prohibiting the parties from  
36 disclosing or using information or records for any purpose other  
37 than the proceeding for which the information or records were  
38 requested or provided, and to require the employee or the  
39 employee's legal representative to return to the appointing authority  
40 all records provided to them under this subdivision, including, but

1 not limited to, all records and documents from any source  
2 containing confidential information protected by this section, and  
3 all copies of those records and documents, within 10 days of the  
4 date that the adverse action becomes final, except for the actual  
5 records and documents that are no longer in the possession of the  
6 employee or the employee's legal representatives because they  
7 were submitted to the administrative tribunal as a component of  
8 an appeal from the adverse action.

9 (3) Individual identifiers, including, but not limited to, names,  
10 social security numbers, and hospital numbers, that are not  
11 necessary for the prosecution or defense of the adverse action,  
12 shall not be disclosed.

13 (4) All records, documents, or other materials containing  
14 confidential information protected by this section that have been  
15 submitted or otherwise disclosed to the administrative agency or  
16 other person as a component of an appeal from an adverse action  
17 shall, upon proper motion by the appointing authority to the  
18 administrative tribunal, be placed under administrative seal and  
19 shall not, thereafter, be subject to disclosure to any person or entity  
20 except upon the issuance of an order of a court of competent  
21 jurisdiction.

22 (5) For purposes of this subdivision, an adverse action becomes  
23 final when the employee fails to answer within the time specified  
24 in Section 19575 of the Government Code, or, after filing an  
25 answer, withdraws the appeal, or, upon exhaustion of the  
26 administrative appeal or of the judicial review remedies as  
27 otherwise provided by law.

28 (u) To the department, for the purpose of conducting an  
29 investigation authorized by ~~Division 4.8 (commencing with Section~~  
30 ~~4910) subdivision (g) of Section 4629.~~

31 *SEC. 2. Section 4629 of the Welfare and Institutions Code is*  
32 *amended to read:*

33 4629. (a) The state shall enter into five-year contracts with  
34 regional centers, subject to the annual appropriation of funds by  
35 the Legislature.

36 (b) The contracts shall include a provision requiring each  
37 regional center to render services in accordance with applicable  
38 provision of state laws and regulations.

39 (c) (1) The contracts shall include annual performance  
40 objectives that shall do both of the following:

- 1 (A) Be specific, measurable, and designed to do all of the  
2 following:
- 3 (i) Assist consumers to achieve life quality outcomes.
  - 4 (ii) Achieve meaningful progress above the current baselines.
  - 5 (iii) Develop services and supports identified as necessary to  
6 meet identified needs.
- 7 (B) Be developed through a public process as described in the  
8 department’s guidelines that includes, but is not limited to, all of  
9 the following:
- 10 (i) Providing information, in an understandable form, to the  
11 community about regional center services and supports, including  
12 budget information and baseline data on services and supports and  
13 regional center operations.
  - 14 (ii) Conducting a public meeting where participants can provide  
15 input on performance objectives and using focus groups or surveys  
16 to collect information from the community.
  - 17 (iii) Circulating a draft of the performance objectives to the  
18 community for input prior to presentation at a regional center board  
19 meeting where additional public input will be taken and considered  
20 before adoption of the objectives.
- 21 (2) In addition to the performance objectives developed pursuant  
22 to this section, the department may specify in the performance  
23 contract additional areas of service and support that require  
24 development or enhancement by the regional center. In determining  
25 those areas, the department shall consider public comments from  
26 individuals and organizations within the regional center catchment  
27 area, the distribution of services and supports within the regional  
28 center catchment area, and review how the availability of services  
29 and supports in the regional area catchment area compares with  
30 other regional center catchment areas.
- 31 (d) Each contract with a regional center shall specify steps to  
32 be taken to ensure contract compliance, including, but not limited  
33 to, all of the following:
- 34 (1) Incentives that encourage regional centers to meet or exceed  
35 performance standards.
  - 36 (2) Levels of probationary status for regional centers that do  
37 not meet, or are at risk of not meeting, performance standards. The  
38 department shall require that corrective action be taken by any  
39 regional center which is placed on probation. Corrective action  
40 may include, but is not limited to, mandated consultation with

1 designated representatives of the Association of Regional Center  
2 Agencies or a management team designated by the department, or  
3 both. The department shall establish the specific timeline for the  
4 implementation of corrective action and monitor its  
5 implementation. When a regional center is placed on probation,  
6 the department shall provide the appropriate area board with a  
7 copy of the correction plan, timeline, and any other action taken  
8 by the department relating to the probationary status of the regional  
9 center.

10 (e) In order to evaluate the regional center's compliance with  
11 its contract performance objectives and legal obligations related  
12 to those objectives, the department shall do both of the following:

13 (1) Annually assess each regional center's achievement of its  
14 previous year's objectives and make the assessment, including  
15 baseline data and performance objectives of the individual regional  
16 centers, available to the public. The department may make a special  
17 commendation of the regional centers that have best engaged the  
18 community in the development of contract performance objectives  
19 and have made the most meaningful progress in meeting or  
20 exceeding contract performance objectives.

21 (2) Monitor the activities of the regional center to ensure  
22 compliance with the provisions of its contracts, including, but not  
23 limited to, reviewing all of the following:

24 (A) The regional center's public process for compliance with  
25 the procedures sets forth in paragraph (2) of subdivision (c).

26 (B) Each regional center's performance objectives for  
27 compliance with the criteria set forth in paragraph (1) of  
28 subdivision (c).

29 (C) Any public comments on regional center performance  
30 objectives sent to the department or to the regional centers, and  
31 soliciting public input on the public process and final performance  
32 standards.

33 (f) The renewal of each contract shall be contingent upon  
34 compliance with the contract including, but not limited to, the  
35 performance objectives, as determined through the department's  
36 evaluation.

37 (g) (1) *Commencing not later than July 1, 2011, each contract*  
38 *with a regional center shall include steps the regional center will*  
39 *take to ensure that its staff, board members, consumers and their*  
40 *representatives, and providers are notified of their right to make*

1 confidential reports of improper regional center activity directly  
2 to the department. These notices shall include all appropriate  
3 methods of contacting the department as determined by the  
4 department. Regional centers shall post notices for regional center  
5 staff where other mandatory employee notices are posted.

6 (2) All regional center contracts in effect on or before July 1,  
7 2011, shall be amended by that date, to include the provisions in  
8 this section.

9 (3) For purposes of paragraph (1), “improper regional center  
10 activity” means an activity by a regional center or by an employee,  
11 officer, or board member of a regional center that meets both of  
12 the following conditions:

13 (A) Is undertaken in the performance of his or her official duties,  
14 whether or not that action is within the scope of his or her  
15 employment.

16 (B) Is either in violation of a state or federal law or regulation,  
17 including, but not limited to, corruption, malfeasance, bribery,  
18 theft of government property, fraudulent claims, coercion,  
19 conversion, malicious prosecution, misuse of government property,  
20 or willful omission to perform duty, or involves gross misconduct  
21 or incompetence.

22 SEC. 3. Section 4637 is added to the Welfare and Institutions  
23 Code, to read:

24 4637. (a) For purposes of this section, “protected disclosure”  
25 means a good faith communication that discloses or demonstrates  
26 an intention to disclose to the department or the Legislature  
27 information that may evidence either of the following:

28 (1) An improper regional center activity, as defined in  
29 paragraph (2) of subdivision (g) of Section 4629.

30 (2) A condition that may significantly threaten the health or  
31 safety of employees or the public if the disclosure or intention to  
32 disclose was made for the purpose of remedying that condition.

33 (b) An employee who files a written complaint with his or her  
34 supervisor, manager, or the regional center alleging actual or  
35 attempted acts of reprisal, retaliation, threats, coercion, or similar  
36 improper acts prohibited by this division, may also file a copy of  
37 the written complaint with the department. A copy of the complaint  
38 filed with the department shall also include a sworn statement that  
39 the contents of the written complaint are true, or are believed by  
40 the affiant to be true, signed under penalty of perjury. The

1 *complaint filed with the department shall be filed within 12 months*  
2 *of the most recent act of reprisal complained of.*

3 *(c) A person who intentionally engages in acts of reprisal,*  
4 *retaliation, threats, coercion, or similar acts against a regional*  
5 *center employee for having made a protected disclosure, shall be*  
6 *guilty of a misdemeanor punishable by a fine not to exceed ten*  
7 *thousand dollars (\$10,000), imprisonment in the county jail for a*  
8 *period not to exceed one year, or both.*

9 *(d) In addition to all other penalties provided by law, a person*  
10 *who intentionally engages in acts of reprisal, retaliation, threats,*  
11 *coercion, or similar acts against a regional center employee for*  
12 *having made a protected disclosure shall be liable in a successful*  
13 *civil action for damages brought against him or her by the injured*  
14 *party. Punitive damages may be awarded by the court in a*  
15 *successful civil action brought pursuant to this subdivision where*  
16 *the acts of the offending party are proven to be malicious.*  
17 *However, an action for damages shall not be available to the*  
18 *injured party pursuant to this subdivision unless the injured party*  
19 *has first filed a complaint with the department pursuant to*  
20 *subdivision (b). Where liability has been established, the injured*  
21 *party shall also be entitled to reasonable attorney's fees as*  
22 *provided by law.*

23 *(e) This section is not intended to prevent a regional center,*  
24 *manager, or supervisor from taking, directing others to take,*  
25 *recommending, or approving a personnel action or from taking*  
26 *or failing to take a personnel action, with respect to an employee,*  
27 *if the governing board of the regional center determines that the*  
28 *action or inaction is justified on the basis of evidence separate*  
29 *and apart from the fact that the person has made a protected*  
30 *disclosure.*

31 *(f) Nothing in this division shall be deemed to diminish the*  
32 *rights, privileges, or remedies of an employee under any other*  
33 *federal or state law or under any employment contract or collective*  
34 *bargaining agreement.*

35 ~~SEC. 2.~~

36 *SEC. 4.* Section 4731 of the Welfare and Institutions Code is  
37 amended to read:

38 4731. (a) Each consumer or any representative acting on behalf  
39 of any consumer or consumers, who believes that any right to  
40 which a consumer is entitled has been abused, punitively withheld,

1 or improperly or unreasonably denied by a regional center,  
2 developmental center, or service provider, may pursue a complaint  
3 as provided in this section.

4 (b) Initial referral of any complaint taken pursuant to this section  
5 shall be to the director of the regional center from which the  
6 consumer receives case management services. If the consumer  
7 resides in a state developmental center, the complaint shall be  
8 made to the director of that state developmental center. The director  
9 shall, within 20 working days of receiving a complaint, investigate  
10 the complaint and send a written proposed resolution to the  
11 complainant and, if applicable, to the service provider. The written  
12 proposed resolution shall include a telephone number and mailing  
13 address for referring the proposed resolution in accordance with  
14 subdivision (c).

15 (c) If the complainant is not satisfied with the proposed  
16 resolution, the complainant may refer the complaint, in writing,  
17 to the Director of Developmental Services within 15 working days  
18 of receipt of the proposed resolution. The director shall, within 45  
19 days of receiving a complaint, issue a written administrative  
20 decision and send a copy of the decision to the complainant, the  
21 director of the regional center or state developmental center, and  
22 the service provider, if applicable. If there is no referral to the  
23 department, the proposed resolution shall become effective on the  
24 20th working day following receipt by the complainant.

25 (d) The department shall annually compile the number of  
26 complaints filed, by each regional center and state developmental  
27 center catchment area, the subject matter of each complaint, and  
28 a summary of each decision. Copies shall be made available to  
29 any person upon request.

30 (e) This section shall not be used to resolve disputes concerning  
31 the nature, scope, or amount of services and supports that should  
32 be included in an individual program plan, for which there is an  
33 appeal procedure established in this division, or disputes regarding  
34 rates or audit appeals for which there is an appeal procedure  
35 established in regulations. Those disputes shall be resolved through  
36 the appeals procedure established by this division or in regulations.

37 (f) All consumers or, where appropriate, their parents, legal  
38 guardian, conservator, or authorized representative, shall be notified  
39 in writing in a language which they comprehend, of the right to  
40 file a complaint pursuant to this section when they apply for

1 services from a regional center or are admitted to a developmental  
2 center, and at each regularly scheduled planning meeting.

3 (g) No individual employed by, holding office in, or serving as  
4 a governing board member of, a regional center shall be subject  
5 to reprisal or harassment for, or directly or indirectly be threatened  
6 with any action that would prevent him or her from, assisting a  
7 consumer or consumer representative from pursuing a complaint  
8 under this section.

9 ~~SEC. 3. Division 4.8 (commencing with Section 4910) is added~~  
10 ~~to the Welfare and Institutions Code, to read:~~

11  
12 ~~DIVISION 4.8. REGIONAL CENTER WHISTLEBLOWER~~  
13 ~~PROTECTION ACT~~

14  
15 ~~4910. This division shall be known, and may be cited, as the~~  
16 ~~“Regional Center Whistleblower Protection Act.”~~

17 ~~4911. For purposes of this division:~~

18 ~~(a) “Illegal order” means a directive to violate or assist in~~  
19 ~~violating a federal, state, or local law, rule, or regulation or an~~  
20 ~~order to work or cause others to work in conditions outside of their~~  
21 ~~line of duty that would unreasonably threaten the health or safety~~  
22 ~~of employees or the public.~~

23 ~~(b) (1) “Improper regional center activity” means an activity~~  
24 ~~by a regional center or by an employee, officer, or board member~~  
25 ~~of a regional center that is undertaken in the performance of his~~  
26 ~~or her official duties, whether or not that action is within the scope~~  
27 ~~of his or her employment, and that (A) is in violation of a state or~~  
28 ~~federal law or regulation, including, but not limited to, corruption,~~  
29 ~~malfeasance, bribery, theft of government property, fraudulent~~  
30 ~~claims, fraud, coercion, conversion, malicious prosecution, misuse~~  
31 ~~of government property, or willful omission to perform duty, or~~  
32 ~~(B) involves gross misconduct or incompetency. “Improper~~  
33 ~~regional center activity” also includes an intentional failure of an~~  
34 ~~employee, officer, or board member of a regional center to comply~~  
35 ~~with any provision of this division.~~

36 ~~(2) Notwithstanding paragraph (1), “improper regional center~~  
37 ~~activity” does not include a decision or action by a regional center~~  
38 ~~that is subject to the fair hearing procedure specified in Article 3~~  
39 ~~(commencing with Section 4710) of Chapter 7 of Division 4.5~~

1 related to the nature, scope, or amount of services included in an  
2 individual consumer’s individual program plan.

3 (e) “Person” means an individual, corporation, partnership,  
4 limited liability company, trust, association, state or local  
5 government, or an agency or instrumentality of any of the  
6 foregoing.

7 (d) “Protected disclosure” means a good faith communication  
8 that discloses or demonstrates an intention to disclose to the  
9 department or the Legislature information that may evidence either  
10 of the following:

- 11 (1) An improper regional center activity.
- 12 (2) A condition that may significantly threaten the health or  
13 safety of employees or the public if the disclosure or intention to  
14 disclose was made for the purpose of remedying that condition.

15 4912. (a) An employee, officer, or board member of a regional  
16 center shall not directly or indirectly use or attempt to use his or  
17 her official authority or influence for the purpose of intimidating,  
18 threatening, coercing, commanding, or attempting to intimidate,  
19 threaten, coerce, or command any person for the purpose of  
20 interfering with the rights conferred pursuant to this division.

21 (b) For the purpose of subdivision (a), “use the official authority  
22 or influence” shall include any of the following:

- 23 (1) Promising to confer, or conferring, a benefit.
- 24 (2) Effecting, or threatening to effect, a reprisal.
- 25 (3) Taking, or directing others to take, or recommending,  
26 processing, or approving, a personnel action, including, but not  
27 limited to, appointment, promotion, transfer, assignment,  
28 performance evaluation, suspension, or other disciplinary action.

29 (e) An employee, officer, or board member of a regional center  
30 who violates subdivision (a) may be liable in an action for civil  
31 damages brought against him or her by the offended party.

32 (d) Nothing in this section shall be construed to authorize an  
33 individual to disclose information otherwise prohibited by or under  
34 law.

35 (e) Nothing in this division shall be construed to prohibit any  
36 type of financial transaction by an employee, an officer, or a board  
37 member of a regional center.

38 4913. (a) Except as expressly set forth in this division, the  
39 department shall administer this division and shall investigate and

1 report, as set forth in this section, regarding improper regional  
2 center activities.

3 (b) Upon receiving specific information that an improper  
4 regional center activity has occurred, the department shall  
5 investigate and may, if necessary, conduct a full investigative audit  
6 of the matter. The identity of the person providing the information  
7 that initiated the investigation shall not be disclosed without the  
8 written permission of the person providing the information unless  
9 the disclosure is to a law enforcement agency that is conducting  
10 a criminal investigation.

11 (c) If the department determines that there is reasonable cause  
12 to believe that an improper regional center activity has occurred,  
13 the department shall report the nature and details of the activity to  
14 the regional center director.

15 (d) If, after investigating, the department finds that an improper  
16 regional center activity has occurred, the department shall send a  
17 copy of the investigative report to the regional center. Within 30  
18 days after receiving a copy of the department's investigative report,  
19 the regional center shall either serve a notice of personnel action  
20 upon the employee or employees who are the subject of the  
21 investigative report or set forth in writing its reasons for not taking  
22 personnel action. The regional center shall submit a copy of the  
23 notice of personnel action to the department. If the focus of the  
24 investigative report is a policy or procedure, instead of an  
25 employee, the regional center shall, within 30 days after receiving  
26 a copy of the department's investigative report, submit a plan of  
27 corrective action to the department.

28 (e) The department shall report the outcome of the investigation  
29 to the policy committees of the Senate and Assembly having  
30 jurisdiction over regional centers, to the Assembly Committee on  
31 Accountability and Administrative Review, and to any other  
32 committee or authority that the department determines appropriate.  
33 If the department reasonably believes that the investigative report  
34 may involve criminal actions, the department shall also report this  
35 information to the Attorney General.

36 4914. The department may request the assistance of a state  
37 department, agency, or employee in conducting an investigative  
38 audit required by this division. No information obtained from the  
39 department, agency, or employee as a result of the department's  
40 request for assistance, nor any information obtained thereafter as

1 a result of further investigation, shall be divulged or made known  
2 to a person without the prior approval of the department.

3 4915. (a) In a case in which the department submits a report  
4 of alleged improper regional center activity to the regional center  
5 director, the regional center director shall report to the department  
6 with respect to the action taken by the individual regarding the  
7 activity, the first report being transmitted within 30 days after the  
8 date of the department's report and monthly thereafter until final  
9 action has been taken.

10 (b) Every investigation shall be kept confidential, except that,  
11 notwithstanding Sections 4514 and 5328, the department shall  
12 issue a report of an investigation that has been substantiated,  
13 keeping confidential the identity of the individual or individuals  
14 who provided information that initiated the investigation and  
15 maintaining the confidentiality of the consumer or consumers of  
16 regional center services that may have been involved. The  
17 department shall only release findings resulting from an  
18 investigation conducted pursuant to this division that are deemed  
19 necessary to serve the interests of the state.

20 (c) Notwithstanding any other law, including, but not limited  
21 to, Section 4914, this division shall not limit the authority conferred  
22 upon the Attorney General or any state or local entity to investigate  
23 any matter.

24 4916. (a) An employee who files a written complaint with his  
25 or her supervisor, manager, or the regional center alleging actual  
26 or attempted acts of reprisal, retaliation, threats, coercion, or similar  
27 improper acts prohibited by this division, may also file a copy of  
28 the written complaint with the department. A copy of the complaint  
29 filed with the department shall also include a sworn statement that  
30 the contents of the written complaint are true, or are believed by  
31 the affiant to be true, signed under penalty of perjury. The  
32 complaint filed with the department shall be filed within 12 months  
33 of the most recent act of reprisal complained of.

34 (b) A person who intentionally engages in acts of reprisal,  
35 retaliation, threats, coercion, or similar acts against a regional  
36 center employee for having made a protected disclosure, is subject  
37 to a fine not to exceed ten thousand dollars (\$10,000) and  
38 imprisonment in the county jail for a period not to exceed one year.

39 (c) In addition to all other penalties provided by law, a person  
40 who intentionally engages in acts of reprisal, retaliation, threats,

1 coercion, or similar acts against a regional center employee for  
2 having made a protected disclosure shall be liable in an action for  
3 damages brought against him or her by the injured party. Punitive  
4 damages may be awarded by the court where the acts of the  
5 offending party are proven to be malicious. However, an action  
6 for damages shall not be available to the injured party unless the  
7 injured party has first filed a complaint with the department  
8 pursuant to subdivision (a), and the department has issued, or failed  
9 to issue, findings. Where liability has been established, the injured  
10 party shall also be entitled to reasonable attorney's fees as provided  
11 by law.

12 (d) ~~This section is not intended to prevent a regional center,~~  
13 ~~manager, or supervisor from taking, directing others to take,~~  
14 ~~recommending, or approving a personnel action or from taking or~~  
15 ~~failing to take a personnel action with respect to an employee if~~  
16 ~~the regional center, manager, or supervisor reasonably believes~~  
17 ~~the action or inaction is justified on the basis of evidence separate~~  
18 ~~and apart from the fact that the person has made a protected~~  
19 ~~disclosure.~~

20 (e) ~~In a civil action or administrative proceeding, once it has~~  
21 ~~been demonstrated by a preponderance of evidence that an activity~~  
22 ~~protected by this division was a contributing factor in the alleged~~  
23 ~~retaliation against a former or current employee, the burden of~~  
24 ~~proof shall be on the supervisor, manager, or regional center to~~  
25 ~~demonstrate by clear and convincing evidence that the alleged~~  
26 ~~action would have occurred for legitimate, independent reasons~~  
27 ~~even if the employee had not engaged in protected disclosures or~~  
28 ~~refused an illegal order. If the supervisor, manager, or regional~~  
29 ~~center fails to meet this burden of proof in a personnel action~~  
30 ~~against the employee in an administrative review, challenge, or~~  
31 ~~adjudication in which retaliation has been demonstrated to be a~~  
32 ~~contributing factor, the employee shall have a complete affirmative~~  
33 ~~defense in the personnel action.~~

34 (f) ~~Nothing in this division shall be deemed to diminish the~~  
35 ~~rights, privileges, or remedies of an employee under any other~~  
36 ~~federal or state law or under any employment contract or collective~~  
37 ~~bargaining agreement.~~

38 ~~4917. By April 1, 2011, the department shall prepare for~~  
39 ~~employees a written explanation of this division. The explanation~~

1 shall include, but need not be limited to, all of the following  
2 information:

3 (a) Instructions on how to contact the department by mail,  
4 telephone, e-mail, and fax.

5 (b) A general overview of improper regional center activities  
6 and examples of three of the most common types of improper  
7 regional center activities that may be reported to the department.

8 (c) An explanation of whistleblower protection available to  
9 employees who report an improper regional center activity to the  
10 department.

11 (d) The requirement that the department protect the anonymity  
12 of a person who reports an improper regional center activity to the  
13 department.

14 (e) The department's authority in connection with violations of  
15 law discovered during an investigation of an improper regional  
16 center activity.

17 (f) A description of the penalties imposed under Section 4916.

18 4918. (a) The department shall prepare for distribution to each  
19 regional center in an electronic format a notice containing the  
20 information in the written explanation prepared pursuant to Section  
21 4917.

22 (b) By July 1, 2011, each regional center shall print and post  
23 the notice distributed pursuant to subdivision (a) at its office or  
24 offices in a location or locations where employee notices are  
25 maintained. A regional center shall not edit the written text of the  
26 notice, but may include its own introductory language in the notice,  
27 if the language and the format selected do not alter the meaning  
28 of the notice.

29 (c) In addition to the posted notice, on July 1, 2011, and annually  
30 thereafter, every regional center shall send the information  
31 contained in the notice by e-mail to its employees who have  
32 authorized access to e-mail from the regional center.

33 (d) The department shall post the information described in  
34 Section 4917 on its Internet Web site.

35 4919. (a) Nothing in this division shall limit or otherwise  
36 modify the right of a regional center employee to pursue any other  
37 civil remedy.

38 (b) Nothing in this division shall be construed to afford civil  
39 service employment rights on a regional center employee.

1 ~~(e) Nothing in this division shall affect or impede a consumer's~~  
2 ~~rights under the Lanterman Developmental Disabilities Services~~  
3 ~~Act (Division 4.5 (commencing with Section 4500)).~~

4 ~~SEC. 4.~~

5 *SEC. 5.* Section 5328 of the Welfare and Institutions Code is  
6 amended to read:

7 5328. All information and records obtained in the course of  
8 providing services under Division 4 (commencing with Section  
9 4000), Division 4.1 (commencing with Section 4400), Division  
10 4.5 (commencing with Section 4500), Division 5 (commencing  
11 with Section 5000), Division 6 (commencing with Section 6000),  
12 or Division 7 (commencing with Section 7100), to either voluntary  
13 or involuntary recipients of services shall be confidential.  
14 Information and records obtained in the course of providing similar  
15 services to either voluntary or involuntary recipients prior to 1969  
16 shall also be confidential. Information and records shall be  
17 disclosed only in any of the following cases:

18 (a) In communications between qualified professional persons  
19 in the provision of services or appropriate referrals, or in the course  
20 of conservatorship proceedings. The consent of the patient, or his  
21 or her guardian or conservator shall be obtained before information  
22 or records may be disclosed by a professional person employed  
23 by a facility to a professional person not employed by the facility  
24 who does not have the medical or psychological responsibility for  
25 the patient's care.

26 (b) When the patient, with the approval of the physician, licensed  
27 psychologist, social worker with a master's degree in social work,  
28 or licensed marriage and family therapist, who is in charge of the  
29 patient, designates persons to whom information or records may  
30 be released, except that nothing in this article shall be construed  
31 to compel a physician, licensed psychologist, social worker with  
32 a master's degree in social work, licensed marriage and family  
33 therapist, nurse, attorney, or other professional person to reveal  
34 information that has been given to him or her in confidence by  
35 members of a patient's family. Nothing in this subdivision shall  
36 be construed to authorize a licensed marriage and family therapist  
37 to provide services or to be in charge of a patient's care beyond  
38 his or her lawful scope of practice.

1 (c) To the extent necessary for a recipient to make a claim, or  
2 for a claim to be made on behalf of a recipient for aid, insurance,  
3 or medical assistance to which he or she may be entitled.

4 (d) If the recipient of services is a minor, ward, or conservatee,  
5 and his or her parent, guardian, guardian ad litem, or conservator  
6 designates, in writing, persons to whom records or information  
7 may be disclosed, except that nothing in this article shall be  
8 construed to compel a physician, licensed psychologist, social  
9 worker with a master’s degree in social work, licensed marriage  
10 and family therapist, nurse, attorney, or other professional person  
11 to reveal information that has been given to him or her in  
12 confidence by members of a patient’s family.

13 (e) For research, provided that the Director of Mental Health  
14 or the Director of Developmental Services designates by regulation,  
15 rules for the conduct of research and requires the research to be  
16 first reviewed by the appropriate institutional review board or  
17 boards. The rules shall include, but need not be limited to, the  
18 requirement that all researchers shall sign an oath of confidentiality  
19 as follows:

20  
21  
22 “ \_\_\_\_\_  
23 Date  
24

25 As a condition of doing research concerning persons who have  
26 received services from \_\_\_\_ (fill in the facility, agency or person),  
27 I, \_\_\_\_, agree to obtain the prior informed consent of such persons  
28 who have received services to the maximum degree possible as  
29 determined by the appropriate institutional review board or boards  
30 for protection of human subjects reviewing my research, and I  
31 further agree not to divulge any information obtained in the course  
32 of such research to unauthorized persons, and not to publish or  
33 otherwise make public any information regarding persons who  
34 have received services such that the person who received services  
35 is identifiable.

36 I recognize that the unauthorized release of confidential  
37 information may make me subject to a civil action under provisions  
38 of the Welfare and Institutions Code.

39 \_\_\_\_\_  
40 ”

Signed

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- (f) To the courts, as necessary to the administration of justice.
- (g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.
- (h) To the Senate Committee on Rules or the Assembly Committee on Rules for the purposes of legislative investigation authorized by the committee.
- (i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.
- (j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.
- (k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

1 (l) Between persons who are trained and qualified to serve on  
2 multidisciplinary personnel teams pursuant to subdivision (d) of  
3 Section 18951. The information and records sought to be disclosed  
4 shall be relevant to the prevention, identification, management, or  
5 treatment of an abused child and his or her parents pursuant to  
6 Chapter 11 (commencing with Section 18950) of Part 6 of Division  
7 9.

8 (m) To county patients' rights advocates who have been given  
9 knowing voluntary authorization by a client or a guardian ad litem.  
10 The client or guardian ad litem, whoever entered into the  
11 agreement, may revoke the authorization at any time, either in  
12 writing or by oral declaration to an approved advocate.

13 (n) To a committee established in compliance with Section  
14 4070.

15 (o) In providing information as described in Section 7325.5.  
16 Nothing in this subdivision shall permit the release of any  
17 information other than that described in Section 7325.5.

18 (p) To the county mental health director or the director's  
19 designee, or to a law enforcement officer, or to the person  
20 designated by a law enforcement agency, pursuant to Sections  
21 5152.1 and 5250.1.

22 (q) If the patient gives his or her consent, information  
23 specifically pertaining to the existence of genetically handicapping  
24 conditions, as defined in Section 125135 of the Health and Safety  
25 Code, may be released to qualified professional persons for  
26 purposes of genetic counseling for blood relatives upon request of  
27 the blood relative. For purposes of this subdivision, "qualified  
28 professional persons" means those persons with the qualifications  
29 necessary to carry out the genetic counseling duties under this  
30 subdivision as determined by the genetic disease unit established  
31 in the State Department of Health *Care* Services under Section  
32 125000 of the Health and Safety Code. If the patient does not  
33 respond or cannot respond to a request for permission to release  
34 information pursuant to this subdivision after reasonable attempts  
35 have been made over a two-week period to get a response, the  
36 information may be released upon request of the blood relative.

37 (r) When the patient, in the opinion of his or her psychotherapist,  
38 presents a serious danger of violence to a reasonably foreseeable  
39 victim or victims, then any of the information or records specified  
40 in this section may be released to that person or persons and to

1 law enforcement agencies as the psychotherapist determines is  
2 needed for the protection of that person or persons. For purposes  
3 of this subdivision, “psychotherapist” means anyone so defined  
4 within Section 1010 of the Evidence Code.

5 (s) (1) To the designated officer of an emergency response  
6 employee, and from that designated officer to an emergency  
7 response employee regarding possible exposure to HIV or AIDS,  
8 but only to the extent necessary to comply with provisions of the  
9 Ryan White Comprehensive AIDS Resources Emergency Act of  
10 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

11 (2) For purposes of this subdivision, “designated officer” and  
12 “emergency response employee” have the same meaning as these  
13 terms are used in the Ryan White Comprehensive AIDS Resources  
14 Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

15 (3) The designated officer shall be subject to the confidentiality  
16 requirements specified in Section 120980, and may be personally  
17 liable for unauthorized release of any identifying information about  
18 the HIV results. Further, the designated officer shall inform the  
19 exposed emergency response employee that the employee is also  
20 subject to the confidentiality requirements specified in Section  
21 120980, and may be personally liable for unauthorized release of  
22 any identifying information about the HIV test results.

23 (t) (1) To a law enforcement officer who personally lodges with  
24 a facility, as defined in paragraph (2), a warrant of arrest or an  
25 abstract of such a warrant showing that the person sought is wanted  
26 for a serious felony, as defined in Section 1192.7 of the Penal  
27 Code, or a violent felony, as defined in Section 667.5 of the Penal  
28 Code. The information sought and released shall be limited to  
29 whether or not the person named in the arrest warrant is presently  
30 confined in the facility. This paragraph shall be implemented with  
31 minimum disruption to health facility operations and patients, in  
32 accordance with Section 5212. If the law enforcement officer is  
33 informed that the person named in the warrant is confined in the  
34 facility, the officer may not enter the facility to arrest the person  
35 without obtaining a valid search warrant or the permission of staff  
36 of the facility.

37 (2) For purposes of paragraph (1), a facility means all of the  
38 following:

39 (A) A state hospital, as defined in Section 4001.

1 (B) A general acute care hospital, as defined in subdivision (a)  
2 of Section 1250 of the Health and Safety Code, solely with regard  
3 to information pertaining to a mentally disordered person subject  
4 to this section.

5 (C) An acute psychiatric hospital, as defined in subdivision (b)  
6 of Section 1250 of the Health and Safety Code.

7 (D) A psychiatric health facility, as described in Section 1250.2  
8 of the Health and Safety Code.

9 (E) A mental health rehabilitation center, as described in Section  
10 5675.

11 (F) A skilled nursing facility with a special treatment program  
12 for chronically mentally disordered patients, as described in  
13 Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the  
14 California Code of Regulations.

15 (u) Between persons who are trained and qualified to serve on  
16 multidisciplinary personnel teams pursuant to Section 15610.55,  
17 15753.5, or 15761. The information and records sought to be  
18 disclosed shall be relevant to the prevention, identification,  
19 management, or treatment of an abused elder or dependent adult  
20 pursuant to Chapter 13 (commencing with Section 15750) of Part  
21 3 of Division 9.

22 (v) The amendment of subdivision (d) enacted at the 1970  
23 Regular Session of the Legislature does not constitute a change  
24 in, but is declaratory of, the preexisting law.

25 (w) This section shall not be limited by Section 5150.05 or 5332.

26 (x) (1) When an employee is served with a notice of adverse  
27 action, as defined in Section 19570 of the Government Code, the  
28 following information and records may be released:

29 (A) All information and records that the appointing authority  
30 relied upon in issuing the notice of adverse action.

31 (B) All other information and records that are relevant to the  
32 adverse action, or that would constitute relevant evidence as  
33 defined in Section 210 of the Evidence Code.

34 (C) The information described in subparagraphs (A) and (B)  
35 may be released only if both of the following conditions are met:

36 (i) The appointing authority has provided written notice to the  
37 consumer and the consumer's legal representative or, if the  
38 consumer has no legal representative or if the legal representative  
39 is a state agency, to the clients' rights advocate, and the consumer,  
40 the consumer's legal representative, or the clients' rights advocate

1 has not objected in writing to the appointing authority within five  
2 business days of receipt of the notice, or the appointing authority,  
3 upon review of the objection has determined that the circumstances  
4 on which the adverse action is based are egregious or threaten the  
5 health, safety, or life of the consumer or other consumers and  
6 without the information the adverse action could not be taken.

7 (ii) The appointing authority, the person against whom the  
8 adverse action has been taken, and the person's representative, if  
9 any, have entered into a stipulation that does all of the following:

10 (I) Prohibits the parties from disclosing or using the information  
11 or records for any purpose other than the proceedings for which  
12 the information or records were requested or provided.

13 (II) Requires the employee and the employee's legal  
14 representative to return to the appointing authority all records  
15 provided to them under this subdivision, including, but not limited  
16 to, all records and documents from any source containing  
17 confidential information protected by this section, and all copies  
18 of those records and documents, within 10 days of the date that  
19 the adverse action becomes final except for the actual records and  
20 documents or copies thereof that are no longer in the possession  
21 of the employee or the employee's legal representative because  
22 they were submitted to the administrative tribunal as a component  
23 of an appeal from the adverse action.

24 (III) Requires the parties to submit the stipulation to the  
25 administrative tribunal with jurisdiction over the adverse action  
26 at the earliest possible opportunity.

27 (2) For the purposes of this subdivision, the State Personnel  
28 Board may, prior to any appeal from adverse action being filed  
29 with it, issue a protective order, upon application by the appointing  
30 authority, for the limited purpose of prohibiting the parties from  
31 disclosing or using information or records for any purpose other  
32 than the proceeding for which the information or records were  
33 requested or provided, and to require the employee or the  
34 employee's legal representative to return to the appointing authority  
35 all records provided to them under this subdivision, including, but  
36 not limited to, all records and documents from any source  
37 containing confidential information protected by this section, and  
38 all copies of those records and documents, within 10 days of the  
39 date that the adverse action becomes final, except for the actual  
40 records and documents or copies thereof that are no longer in the

1 possession of the employee or the employee’s legal representatives  
 2 because they were submitted to the administrative tribunal as a  
 3 component of an appeal from the adverse action.

4 (3) Individual identifiers, including, but not limited to, names,  
 5 social security numbers, and hospital numbers, that are not  
 6 necessary for the prosecution or defense of the adverse action,  
 7 shall not be disclosed.

8 (4) All records, documents, or other materials containing  
 9 confidential information protected by this section that has been  
 10 submitted or otherwise disclosed to the administrative agency or  
 11 other person as a component of an appeal from an adverse action  
 12 shall, upon proper motion by the appointing authority to the  
 13 administrative tribunal, be placed under administrative seal and  
 14 shall not, thereafter, be subject to disclosure to any person or entity  
 15 except upon the issuance of an order of a court of competent  
 16 jurisdiction.

17 (5) For purposes of this subdivision, an adverse action becomes  
 18 final when the employee fails to answer within the time specified  
 19 in Section 19575 of the Government Code, or, after filing an  
 20 answer, withdraws the appeal, or, upon exhaustion of the  
 21 administrative appeal or of the judicial review remedies as  
 22 otherwise provided by law.

23 (y) To the State Department of Developmental Services for the  
 24 purpose of conducting an investigation authorized pursuant to  
 25 ~~Division 4.8 (commencing with Section 4910)~~ *subdivision (g) of*  
 26 *Section 4629.*

27 ~~SEC. 5.~~

28 *SEC. 6.* No reimbursement is required by this act pursuant to  
 29 Section 6 of Article XIII B of the California Constitution because  
 30 the only costs that may be incurred by a local agency or school  
 31 district will be incurred because this act creates a new crime or  
 32 infraction, eliminates a crime or infraction, or changes the penalty  
 33 for a crime or infraction, within the meaning of Section 17556 of  
 34 the Government Code, or changes the definition of a crime within  
 35 the meaning of Section 6 of Article XIII B of the California  
 36 Constitution.

37 *SEC. 7. This act is an urgency statute necessary for the*  
 38 *immediate preservation of the public peace, health, or safety within*  
 39 *the meaning of Article IV of the Constitution and shall go into*  
 40 *immediate effect. The facts constituting the necessity are:*

1 *In order to provide timely protections to regional center*  
2 *employees and improve services to persons with developmental*  
3 *disabilities and their families, at the earliest possible time, it is*  
4 *necessary that this act go into effect immediately.*

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