

AMENDED IN ASSEMBLY JUNE 28, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 534

**Introduced by Senator Corbett
(Coauthors: Senators Hancock, Liu, and Price)**

February 17, 2011

An act to amend Section 17612 of the Government Code, and to amend ~~Section~~ *Sections 13823.7, 13823.13, and 13823.95* of the Penal Code, relating to victims of sexual assault.

LEGISLATIVE COUNSEL'S DIGEST

SB 534, as amended, Corbett. Victims of sexual assault.

Existing

(1) Existing law provides that no costs incurred by a qualified health care professional, hospital, or other emergency medical facility for the examination of the victim of a sexual assault for the purposes of gathering evidence for possible prosecution shall be charged directly or indirectly to the victim of the assault. Existing law provides that the law enforcement agency in the jurisdiction in which the alleged sexual assault was committed which requests the examination has the option of determining whether or not the examination will be performed in the office of a physician and surgeon, and bills for those costs shall be submitted to that local jurisdiction and the local jurisdiction shall bear those costs.

This bill would delete the provision requiring that the costs be treated as local costs and charged to the local government agency in whose jurisdiction the alleged offense was committed, and the provision that

the bills for the costs shall be submitted to the local law enforcement agency. This bill would delete the provision giving the local law enforcement agency the option of whether or not the examination will be performed in the office of a physician and surgeon.

This bill would also provide that victims of sexual assault are not required to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam. Because this bill would expand the provision of forensic medical examinations paid for by a local agency, it would impose a state-mandated local program. The bill would also provide that any victim who seeks medical treatment shall not be required to engage with law enforcement at the time of the examination or any time following. The bill would provide that specified funds in the annual Budget Act for the California Emergency Management Agency shall be used to reimburse any state-mandated reimbursable costs resulting from this act that would otherwise be claimable through the state mandates reimbursement process. The bill would provide that the amount of the examination costs shall be set by the California Emergency Management Agency and shall be paid through the VAWA/STOP federal funding, as provided. The bill would provide that the designation of the federal funds for medical forensic examinations shall sunset on January 1, 2014. The bill would make related conforming changes.

(2) Existing law requires the California Emergency Management Agency to establish a protocol for the examination and treatment of victims of sexual assault, including child abuse. Existing law requires the protocols to include a provision for the performance of a physical examination for evidence of sexual assault, among other things.

This bill would additionally require that the protocol also include a provision for the performance of a physical examination for any injuries or other physical condition, whether internal or external, that was caused or was a result of a sexual assault or child molestation.

(3) Existing law requires the California Emergency Management Agency to develop a course of training for qualified health care professionals relating to the examination and treatment of victims of sexual assault. Existing law requires that the agency consult with health care professionals and law enforcement agencies in developing the course.

This bill would encourage the agency to designate that a course of training for qualified health care professionals shall partner with allied professional training courses, such as sexual assault prosecutor training

as administered by the California District Attorneys Association, as specified.

(4) For purposes of these provisions, existing law defines a qualified health care professional as a licensed physician and surgeon, or a nurse who works in consultation with a physician and surgeon who conducts examinations for victims of sexual abuse.

This bill would include a currently licensed nurse practitioner in the definition of a qualified health care professional.

~~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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

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

1 SECTION 1. Section 17612 of the Government Code is
2 amended to read:

3 17612. (a) Upon receipt of the report submitted by the
4 commission pursuant to Section 17600, except as provided in
5 Section 13823.95 of the Penal Code, funding shall be provided in
6 the subsequent Budget Act for costs incurred in prior years. No
7 funding shall be provided for years in which a mandate is
8 suspended.

9 (b) The Legislature may amend, modify, or supplement the
10 parameters and guidelines, reasonable reimbursement methodology,
11 and adopted statewide estimate of costs for the initial claiming
12 period and budget year for mandates contained in the annual
13 Budget Act. If the Legislature amends, modifies, or supplements
14 the parameters and guidelines, reasonable reimbursement
15 methodology, and adopted statewide estimate of costs for the initial
16 claiming period and budget year, it shall make a declaration in
17 separate legislation specifying the basis for the amendment,
18 modification, or supplement.

19 (c) If the Legislature deletes from the annual Budget Act funding
20 for a mandate, the local agency or school district may file in the

1 Superior Court of the County of Sacramento an action in
 2 declaratory relief to declare the mandate unenforceable and enjoin
 3 its enforcement for that fiscal year.

4 *SEC. 2. Section 13823.7 of the Penal Code is amended to read:*

5 13823.7. The protocol adopted pursuant to Section 13823.5
 6 for the *medical treatment of victims of sexual assault, which*
 7 *includes the examination and treatment of victims of sexual assault*
 8 *or attempted sexual assault, including child molestation, and the*
 9 *collection and preservation of evidence therefrom shall include*
 10 *provisions for all of the following:*

11 (a) Notification of injuries and a report of suspected child sexual
 12 abuse to law enforcement authorities.

13 (b) Obtaining consent for the examination, for the treatment of
 14 injuries, for the collection of evidence, and for the photographing
 15 of injuries.

16 (c) Taking a patient history of sexual assault and other relevant
 17 medical history.

18 (d) Performance of the physical examination for evidence of
 19 sexual assault.

20 (e) Collection of physical evidence of assault.

21 (f) *Performance of a physical examination for any injuries or*
 22 *other physical, whether internal or external, conditions caused as*
 23 *a result of the sexual assault or child molestation.*

24 ~~(f)~~

25 (g) Collection of ~~other~~ medical specimens, *including, but not*
 26 *limited to, foreign bodily fluid, body tissue samples for detection,*
 27 *and treatment of suspected sexually transmitted disease.*

28 ~~(g)~~

29 (h) Procedures for the preservation and disposition of physical
 30 evidence.

31 ~~SEC. 2.~~

32 *SEC. 3. Section 13823.95 of the Penal Code is amended to*
 33 *read:*

34 13823.95. (a) No costs incurred by a qualified health care
 35 professional, hospital, or other emergency medical facility for the
 36 examination of the victim of a sexual assault, as described in the
 37 protocol developed pursuant to Section 13823.5, when the
 38 examination is performed, pursuant to Sections 13823.5 and
 39 ~~13823.7, for the purposes of gathering evidence for possible~~
 40 ~~prosecution, shall be charged directly or indirectly to the victim~~

1 of the assault. Those costs shall be treated as local costs and
2 charged to the local governmental agency in whose jurisdiction
3 the alleged offense was committed.

4 (b) Bills for these costs shall be submitted to the law
5 enforcement agency in the jurisdiction in which the alleged offense
6 was committed which requests the examination. 13823.7, shall be
7 charged directly or indirectly to the victim of the assault. Any
8 victim who seeks medical treatment, as defined in Section 13823.93,
9 shall not be required to engage with law enforcement at the time
10 of the examination or any time following. The examination costs,
11 the amount of which shall be set by the California Emergency
12 Management Agency, shall be paid through the VAWA/STOP
13 federal funding. The California Emergency Management Agency
14 shall direct the funds set aside in the "Discretionary" Category
15 of the VAWA/STOP funding formula, to be designated for payment
16 of medical forensic examinations. The designation of the federal
17 funds for medical forensic examinations shall sunset on January
18 1, 2014.

19 (e)

20 (b) Victims of sexual assault are not required to participate in
21 the criminal justice system or cooperate with law enforcement in
22 order to be provided with a forensic medical exam.

23 (d) The law enforcement agency in the jurisdiction in which the
24 alleged offense was committed that requests the examination has
25 the option of determining whether or not the examination will be
26 performed in the office of a physician and surgeon.

27 (e)

28 (c) Funds provided to the California Emergency Management
29 Agency pursuant to Item 0690-102-0890 of the annual Budget Act
30 shall be made available to the Controller to be used for claims
31 pursuant to this section that are approved by the Commission on
32 State Mandates that would otherwise be claimable through the
33 state mandates reimbursement process.

34 SEC. 4. Section 13823.13 of the Penal Code is amended to
35 read:

36 13823.13. (a) The agency shall develop a course of training
37 for qualified health care professionals relating to the examination
38 and treatment of victims of sexual assault. In developing the
39 curriculum for the course, the agency shall consult with health
40 care professionals and appropriate law enforcement agencies. The

1 agency shall also obtain recommendations from the same health
2 care professionals and appropriate law enforcement agencies on
3 the best means to disseminate the course of training on a statewide
4 basis. *The agency is encouraged to designate that a course of*
5 *training for qualified health care professionals, as described in*
6 *this section, and shall partner with other allied professionals*
7 *training courses, such as sexual assault investigator training*
8 *administered by the Peace Officer Standards and Training (POST),*
9 *sexual assault prosecutor training as administered by the*
10 *California District Attorneys Association (CDA), or sexual assault*
11 *advocate training as administered by California Coalition Against*
12 *Sexual Assault (CalCASA).*

13 (b) The training course developed pursuant to subdivision (a)
14 shall be designed to train qualified health care professionals to do
15 all of the following:

16 (1) Perform a health assessment of victims of sexual assault in
17 accordance with any applicable minimum standards set forth in
18 Section 13823.11.

19 (2) Collect and document physical and laboratory evidence in
20 accordance with any applicable minimum standards set forth in
21 Section 13823.11.

22 (3) Provide information and referrals to victims of sexual assault
23 to enhance the continuity of care of victims.

24 (4) Present testimony in court.

25 (c) As used in this section, “qualified health care professional”
26 means a physician and surgeon currently licensed pursuant to
27 Chapter 5 (commencing with Section 2000) of Division 2 of the
28 Business and Professions Code, or a nurse currently licensed
29 pursuant to Chapter 6 (commencing with Section 2700) of Division
30 2 of the Business and Professions Code who works in consultation
31 with a physician and surgeon or who conducts examinations
32 described in Section 13823.9 in a general acute care hospital or in
33 the office of a physician and surgeon, *or a nurse practitioner*
34 *currently licensed pursuant to Chapter 6 (commencing with Section*
35 *2834) of Division 2 of the Business and Professions Code.*

36 (d) As used in this section, “appropriate law enforcement
37 agencies” may include, but shall not be limited to, the Attorney
38 General of the State of California, any district attorney, and any
39 agency of the State of California expressly authorized by statute
40 to investigate or prosecute law violators.

1 ~~SEC. 3.—If the Commission on State Mandates determines that~~
2 ~~this act contains costs mandated by the state, reimbursement to~~
3 ~~local agencies and school districts for those costs shall be made~~
4 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
5 ~~4 of Title 2 of the Government Code.~~

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