

AMENDED IN ASSEMBLY AUGUST 15, 2011

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 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.

(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.~~

The bill would provide that victims of sexual assault who request a medical evidentiary examination shall be provided with one. The bill would provide that the victim is not required to participate in the criminal justice system, as specified. The bill would provide that the cost of the medical evidentiary examination is not chargeable, directly or indirectly, to the victim. The bill would provide that the cost of that examination is a cost chargeable to the local law enforcement agency in whose jurisdiction the alleged offense occurred, provided however, that the local law enforcement agency may seek reimbursement from the California Emergency Management Agency for the costs of those examinations, as specified, in those cases in which the victim does not participate in the criminal justice system.

The bill would require the California Emergency Management Agency to establish a reasonable, standard, statewide fee, not to exceed \$300, for medical evidentiary examinations, and would specify certain federal grant moneys to be used by the agency for reimbursement to local law enforcement agencies, as specified, in those cases where the victim does not participate in the criminal justice system. The bill would authorize the agency to use those federal funds for that purpose until January 1, 2014.

~~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. 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)~~

(2) 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 and require the agency to~~ partner with allied professional training courses, such as sexual assault prosecutor training as administered by the California District Attorneys Association, *regarding that course of training*, as specified.

~~(4)~~

(3) 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 *and a currently licensed physician assistant* in the definition of a qualified health care professional.

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

1 the subsequent Budget Act for costs incurred in prior years. No
2 funding shall be provided for years in which a mandate is
3 suspended.

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

14 (c) If the Legislature deletes from the annual Budget Act funding
15 for a mandate, the local agency or school district may file in the
16 Superior Court of the County of Sacramento an action in
17 declaratory relief to declare the mandate unenforceable and enjoin
18 its enforcement for that fiscal year.

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

20 13823.7. The protocol adopted pursuant to Section 13823.5
21 for the medical treatment of victims of sexual assault, which
22 includes the examination and treatment of victims of sexual assault
23 or attempted sexual assault, including child molestation, and the
24 collection and preservation of evidence therefrom shall include
25 provisions for all of the following:

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

28 (b) Obtaining consent for the examination, for the treatment of
29 injuries, for the collection of evidence, and for the photographing
30 of injuries.

31 (c) Taking a patient history of sexual assault and other relevant
32 medical history.

33 (d) Performance of the physical examination for evidence of
34 sexual assault.

35 (e) Collection of physical evidence of assault.

36 ~~(f) Performance of a physical examination for any injuries or~~
37 ~~other physical, whether internal or external, conditions caused as~~
38 ~~a result of the sexual assault or child molestation.~~

1 ~~(g) Collection of medical specimens, including, but not limited~~
2 ~~to, foreign bodily fluid, body tissue samples for detection, and~~
3 ~~treatment of suspected sexually transmitted disease.~~

4 ~~(f) Collection of other medical specimens.~~

5 ~~(h)~~

6 ~~(g) Procedures for the preservation and disposition of physical~~
7 ~~evidence.~~

8 SEC. 3. Section 13823.95 of the Penal Code is amended to
9 read:

10 13823.95. (a) No costs incurred by a qualified health care
11 professional, hospital, or other emergency medical facility for the
12 *medical evidentiary examination portion of the* examination of the
13 victim of a sexual assault, as described in the protocol developed
14 pursuant to Section 13823.5, when the examination is performed,
15 pursuant to Sections 13823.5 and ~~13823.7, shall be charged directly~~
16 ~~or indirectly to the victim of the assault. Any victim who seeks~~
17 ~~medical treatment, as defined in Section 13823.93, shall not be~~
18 ~~required to engage with law enforcement at the time of the~~
19 ~~examination or any time following. The examination costs, the~~
20 ~~amount of which shall be set by the California Emergency~~
21 ~~Management Agency, shall be paid through the VAWA/STOP~~
22 ~~federal funding. The California Emergency Management Agency~~
23 ~~shall direct the funds set aside in the “Discretionary” Category of~~
24 ~~the VAWA/STOP funding formula, to be designated for payment~~
25 ~~of medical forensic examinations. The designation of the federal~~
26 ~~funds for medical forensic examinations shall sunset on January~~
27 ~~1, 2014.~~

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

31 ~~(c) Funds provided to the California Emergency Management~~
32 ~~Agency pursuant to Item 0690-102-0890 of the annual Budget Act~~
33 ~~shall be made available to the Controller to be used for claims~~
34 ~~pursuant to this section that are approved by the Commission on~~
35 ~~State Mandates that would otherwise be claimable through the~~
36 ~~state mandates reimbursement process. 13823.7, shall be charged~~
37 ~~directly or indirectly to the victim of the assault.~~

38 ~~(b) Any victim of a sexual assault who seeks a medical~~
39 ~~evidentiary examination, as that term is used in Section 13823.93,~~
40 ~~shall be provided with a medical evidentiary examination. No~~

1 victim of a sexual assault shall be required to participate or to
2 agree to participate in the criminal justice system, either prior to
3 the examination, or at any other time.

4 (c) The cost of a medical evidentiary examination performed
5 by a qualified health care professional, hospital, or other
6 emergency medical facility for a victim of a sexual assault shall
7 be treated as a local cost and charged to the local law enforcement
8 agency in whose jurisdiction the alleged offense was committed,
9 provided however, that the local law enforcement agency may seek
10 reimbursement, as provided in subdivision (d), for the cost of
11 conducting the medical evidentiary examination portion of a
12 medical examination of a sexual assault victim who does not
13 participate in the criminal justice system.

14 (d) The California Emergency Management Agency shall
15 establish a reasonable, standard, statewide fee, not to exceed three
16 hundred dollars (\$300), that may be charged by a qualified health
17 care professional, hospital, or other emergency medical facility
18 to perform the medical evidentiary examination portion of a
19 medical examination of a victim of a sexual assault. The agency
20 shall use the discretionary funds from federal grants awarded to
21 the agency pursuant to the federal Violence Against Women and
22 Department of Justice Reorganization Act of 2005 through the
23 federal Office of Violence Against Women, specifically, the STOP
24 (Services, Training, Officers, and Prosecutors) Violence Against
25 Women Formula Grant Program. The agency is authorized to use
26 grant funds to pay for medical evidentiary examinations until
27 January 1, 2014.

28 SEC. 4. Section 13823.13 of the Penal Code is amended to
29 read:

30 13823.13. (a) The agency shall develop a course of training
31 for qualified health care professionals relating to the examination
32 and treatment of victims of sexual assault. In developing the
33 curriculum for the course, the agency shall consult with health
34 care professionals and appropriate law enforcement agencies. The
35 agency shall also obtain recommendations from the same health
36 care professionals and appropriate law enforcement agencies on
37 the best means to disseminate the course of training on a statewide
38 basis. The agency is encouraged to designate ~~that~~ a course of
39 training for qualified health care professionals, as described in this
40 section, and shall partner with other allied professionals training

1 courses, such as sexual assault investigator training administered
2 by the Peace Officer Standards and Training (POST), sexual assault
3 prosecutor training as administered by the California District
4 Attorneys Association (CDAA), or sexual assault advocate training
5 as administered by *the* California Coalition Against Sexual Assault
6 (CalCASA).

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

10 (1) Perform a health assessment of victims of sexual assault in
11 accordance with any applicable minimum standards set forth in
12 Section 13823.11.

13 (2) Collect and document physical and laboratory evidence in
14 accordance with any applicable minimum standards set forth in
15 Section 13823.11.

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

18 (4) Present testimony in court.

19 (c) As used in this section, “qualified health care professional”
20 means a physician and surgeon currently licensed pursuant to
21 Chapter 5 (commencing with Section 2000) of Division 2 of the
22 Business and Professions Code, or a nurse currently licensed
23 pursuant to Chapter 6 (commencing with Section 2700) of Division
24 2 of the Business and Professions Code who works in consultation
25 with a physician and surgeon or who conducts examinations
26 described in Section 13823.9 in a general acute care hospital or in
27 the office of a physician and surgeon, ~~or~~ a nurse practitioner
28 currently licensed pursuant to Chapter 6 (commencing with Section
29 2834) of Division 2 of the Business and Professions Code, *or a*
30 *physician assistant licensed pursuant to Chapter 7.7 (commencing*
31 *with Section 3500) of Division 2 of the Business and Professions*
32 *Code.*

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

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