

Senate Bill No. 534

CHAPTER 360

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.

[Approved by Governor September 29, 2011. Filed with
Secretary of State September 29, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 534, 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 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 provide that the amount that a qualified health care professional, hospital, or other emergency medical facility may charge to perform the medical evidentiary examination portion of a medical examination of a victim of sexual assault may not exceed \$300, and would specify certain federal grant moneys to be used by the California Emergency Management Agency for reimbursement to local law enforcement agencies for the cost of medical evidentiary examinations, 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 make related conforming changes.

(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 a course of training for qualified health care professionals 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.

(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.

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

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

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

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

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

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

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

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

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

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

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

(e) Collection of physical evidence of assault.

(f) Collection of other medical specimens.

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

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

13823.95. (a) No costs incurred by a qualified health care professional, hospital, or other emergency medical facility for the medical evidentiary examination portion of the examination of the victim of a sexual assault, as described in the protocol developed pursuant to Section 13823.5, when the examination is performed, pursuant to Sections 13823.5 and 13823.7, shall be charged directly or indirectly to the victim of the assault.

(b) Any victim of a sexual assault who seeks a medical evidentiary examination, as that term is used in Section 13823.93, shall be provided with a medical evidentiary examination. No victim of a sexual assault shall be required to participate or to agree to participate in the criminal justice system, either prior to the examination, or at any other time.

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

(d) The amount that may be charged by a qualified health care professional, hospital, or other emergency medical facility to perform the medical evidentiary examination portion of a medical examination of a victim of a sexual assault shall not exceed three hundred dollars (\$300). The California Emergency Management Agency shall use the discretionary funds from federal grants awarded to the agency pursuant to the federal Violence Against Women and Department of Justice Reorganization Act of 2005 through the federal Office of Violence Against Women, specifically, the STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program to cover the cost of the medical evidentiary

examination portion of a medical examination of a sexual assault victim. The agency is authorized to use grant funds to pay for medical evidentiary examinations until January 1, 2014.

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

13823.13. (a) The agency shall develop a course of training for qualified health care professionals relating to the examination and treatment of victims of sexual assault. In developing the curriculum for the course, the agency shall consult with health care professionals and appropriate law enforcement agencies. The agency shall also obtain recommendations from the same health care professionals and appropriate law enforcement agencies on the best means to disseminate the course of training on a statewide basis. The agency is encouraged to designate a course of training for qualified health care professionals, as described in this section, and shall partner with other allied professionals training courses, such as sexual assault investigator training administered by the Peace Officer Standards and Training (POST), sexual assault prosecutor training as administered by the California District Attorneys Association (CDA), or sexual assault advocate training as administered by the California Coalition Against Sexual Assault (CalCASA).

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

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

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

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

(4) Present testimony in court.

(c) As used in this section, “qualified health care professional” means a physician and surgeon currently licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a nurse currently licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who works in consultation with a physician and surgeon or who conducts examinations described in Section 13823.9 in a general acute care hospital or in the office of a physician and surgeon, a nurse practitioner currently licensed pursuant to Chapter 6 (commencing with Section 2834) of Division 2 of the Business and Professions Code, or a physician assistant licensed pursuant to Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code.

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