

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE APRIL 22, 2013

AMENDED IN SENATE APRIL 11, 2013

SENATE BILL

No. 651

Introduced by Senators Pavley and Leno

(Coauthors: Senators Block, De León, DeSaulnier, Lieu, and Yee)

(Coauthors: Assembly Members Ammiano, Bloom, Blumenfield, Brown, Chesbro, Fox, Frazier, Garcia, Quirk-Silva, Rendon, Ting, and Williams)

February 22, 2013

An act to amend Sections 1280.4 and 1418 of, and to add Section 1424.6 to, the Health and Safety Code, and to amend Section 4427.5 of, and to add Sections 4313.5 and 4427.7 to, the Welfare and Institutions Code, relating to health and human services.

LEGISLATIVE COUNSEL'S DIGEST

SB 651, as amended, Pavley. Developmental centers and state hospitals.

Existing law establishes the State Department of Developmental Services and sets forth its powers and duties relating to the administration of the state developmental centers. Existing law establishes the State Department of State Hospitals and sets forth its powers and duties relating to the administration of state hospitals.

This bill would require designated investigators of developmental centers and state hospitals to ~~authorize~~ request a sexual assault forensic medical examination for any resident of a developmental center or any resident of a state hospital, as applicable, who is a victim or is

reasonably suspected to be a victim of sexual assault, as defined, performed at an appropriate facility off the grounds of the developmental center or state hospital in accordance with specified provisions. The bill would authorize a sexual assault forensic medical examination to be performed at a developmental center or a state hospital by an independent sexual assault forensic examiner designated to perform examinations of victims of sexual assault in the jurisdiction of the developmental center or state hospital only under specified circumstances.

Existing law requires a developmental center to immediately report specified incidents involving a resident to the local law enforcement agency having jurisdiction over the city or county in which the developmental center is located. Existing law provides for the licensure and regulation of health facilities, including long-term *health* care facilities, as defined, by the State Department of Public Health. Existing law provides for a citation system for the imposition of civil penalties against long-term *health* care facilities, including penalties specifically applicable to certain skilled nursing facilities and intermediate care facilities, in violation of applicable laws and regulations.

This bill would deem a developmental center's failure to report an incident that occurs in a distinct part long-term health care facility to local law enforcement a class B violation, as specified, and subject to the penalties applicable to those certain skilled nursing and intermediate care facilities violation subject to certain penalties, as specified. The bill would provide that if the incident occurs in the general acute care hospital or acute psychiatric hospital portion of the developmental center, a failure to immediately report the incident would be subject to a civil penalty of \$100 for each day the incident is not reported. The bill would make other related changes.

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 1280.4 of the Health and Safety Code is
- 2 amended to read:
- 3 1280.4. (a) If a licensee of a health facility licensed under
- 4 subdivision (a), (b), or (f) of Section 1250 fails to report an adverse
- 5 event pursuant to Section 1279.1, the department may assess the
- 6 licensee a civil penalty in an amount not to exceed one hundred

1 dollars (\$100) for each day that the adverse event is not reported
2 following the initial five-day period or 24-hour period, as
3 applicable, pursuant to subdivision (a) of Section 1279.1. ~~If the~~

4 (b) *If a licensee of a health facility licensed under subdivision*
5 *(a) or (b) of Section 1250 is required to, and fails to, immediately*
6 *report an incident under subdivision (a) of Section 4427.5 of the*
7 *Welfare and Institutions Code, the department may assess the*
8 *licensee a civil penalty in the amount not to exceed one hundred*
9 *dollars (\$100) for each day that the incident was not reported to*
10 *law enforcement.*

11 (c) *If a licensee disputes a determination by the department*
12 *regarding an alleged failure to report an adverse event, as described*
13 *in this section, the licensee may, within 10 days, request a hearing*
14 *pursuant to Section 100171. 131071. Penalties shall be paid when*
15 *appeals pursuant to those provisions have been exhausted.*

16 *SEC. 2. Section 1418 of the Health and Safety Code is amended*
17 *to read:*

18 1418. As used in this chapter:

19 (a) “Long-term health care facility” means any facility licensed
20 pursuant to Chapter 2 (commencing with Section 1250) that is any
21 of the following:

- 22 (1) Skilled nursing facility.
- 23 (2) Intermediate care facility.
- 24 (3) Intermediate care facility/developmentally disabled.
- 25 (4) Intermediate care facility/developmentally disabled
26 habilitative.
- 27 (5) Intermediate care facility/developmentally disabled-nursing.
- 28 (6) Congregate living health facility.
- 29 (7) Nursing facility.
- 30 (8) Intermediate care facility/developmentally
31 disabled-continuous nursing.

32 (b) “Long-term health care facility” also includes a pediatric
33 day health and respite care facility licensed pursuant to Chapter
34 8.6 (commencing with Section 1760).

35 (c) “Long-term health care facility” does not include a general
36 acute care hospital or an acute psychiatric hospital, except for that
37 distinct part of the hospital that provides skilled nursing facility,
38 intermediate care facility, *intermediate care*
39 *facility/developmentally disabled*, or pediatric day health and
40 respite care facility services.

1 (d) “Licensee” means the holder of a license issued under
2 Chapter 2 (commencing with Section 1250) or Chapter 8.6
3 (commencing with Section 1760) for a long-term health care
4 facility.

5 **SECTION 1.**

6 *SEC. 3.* Section 1424.6 is added to the Health and Safety Code,
7 to read:

8 1424.6. Failure by a developmental center to report incidents
9 as required under subdivision (a) of Section 4427.5 of the Welfare
10 and Institutions Code shall be deemed a class B violation *if the*
11 *incident occurs in a distinct part long-term health care facility,*
12 *and shall be subject to the penalties specified in Section 1424.5*
13 *for distinct part skilled nursing facilities or distinct part*
14 *intermediate care facilities, or Section 1424 for other distinct part*
15 *long-term health care facilities.*

16 ~~*SEC. 2.*~~

17 *SEC. 4.* Section 4313.5 is added to the Welfare and Institutions
18 Code, to read:

19 4313.5. (a) Designated investigators of state hospitals shall
20 ~~authorize~~ *request* a sexual assault forensic medical examination
21 for any resident of a state hospital who is a victim or *reasonably*
22 *suspected to be a* victim of sexual assault, as defined in Section
23 15610.63, performed at an appropriate facility off the grounds of
24 a state hospital in accordance with Sections 13823.5 to 13823.12,
25 inclusive, of the Penal Code, which includes, but is not limited to,
26 the requirement that the law enforcement agency having
27 jurisdiction over the city or county in which the state hospital is
28 located be notified by the person performing the sexual assault
29 forensic medical examination *and that consent is obtained* as
30 required by ~~subdivision (a)~~ *subdivisions (a) and (c)* of Section
31 13823.11 of the Penal Code.

32 (b) The sexual assault forensic medical examination described
33 in subdivision (a) may be performed at a state hospital by an
34 independent sexual assault forensic examiner designated to perform
35 examinations of victims of sexual assault in the jurisdiction of the
36 state hospital only if it is deemed safer for the victim and the state
37 hospital’s examination facilities are equipped with forensic
38 examination and evidence collection capability comparable to that
39 of the designated community examination facility, as determined
40 by the independent sexual assault forensic examiner.

1 ~~SEC. 3.~~

2 *SEC. 5.* Section 4427.5 of the Welfare and Institutions Code
3 is amended to read:

4 4427.5. (a) (1) A developmental center shall immediately
5 report the following incidents involving a resident to the local law
6 enforcement agency having jurisdiction over the city or county in
7 which the developmental center is located, regardless of whether
8 the Office of Protective Services has investigated the facts and
9 circumstances relating to the incident:

10 (A) A death.

11 (B) A sexual assault, as defined in Section 15610.63.

12 (C) An assault with a deadly weapon, as described in Section
13 245 of the Penal Code, by a nonresident of the developmental
14 center.

15 (D) An assault with force likely to produce great bodily injury,
16 as described in Section 245 of the Penal Code.

17 (E) An injury to the genitals when the cause of the injury is
18 undetermined.

19 (F) A broken bone, when the cause of the break is undetermined.

20 (2) If the incident is reported to the law enforcement agency by
21 telephone, a written report of the incident shall also be submitted
22 to the agency, within two working days.

23 (3) The reporting requirements of this subdivision are in addition
24 to, and do not substitute for, the reporting requirements of
25 mandated reporters, and any other reporting and investigative
26 duties of the developmental center and the department as required
27 by law.

28 (4) Nothing in this subdivision shall be interpreted to prevent
29 the developmental center from reporting any other criminal act
30 constituting a danger to the health or safety of the residents of the
31 developmental center to the local law enforcement agency.

32 (b) (1) The department shall report to the agency described in
33 subdivision (i) of Section 4900 any of the following incidents
34 involving a resident of a developmental center:

35 (A) Any unexpected or suspicious death, regardless of whether
36 the cause is immediately known.

37 (B) Any allegation of sexual assault, as defined in Section
38 15610.63, in which the alleged perpetrator is a developmental
39 center or department employee or contractor.

1 (C) Any report made to the local law enforcement agency in
 2 the jurisdiction in which the facility is located that involves
 3 physical abuse, as defined in Section 15610.63, in which a staff
 4 member is implicated.

5 (2) A report pursuant to this subdivision shall be made no later
 6 than the close of the first business day following the discovery of
 7 the reportable incident.

8 (c) The department shall do both of the following:

9 (1) Annually provide written information to every developmental
 10 center employee regarding all of the following:

11 (A) The statutory and departmental requirements for mandatory
 12 reporting of suspected or known abuse.

13 (B) The rights and protections afforded to individuals' reporting
 14 of suspected or known abuse.

15 (C) The penalties for failure to report suspected or known abuse.

16 (D) The telephone numbers for reporting suspected or known
 17 abuse or neglect to designated investigators of the department and
 18 to local law enforcement agencies.

19 (2) On or before August 1, 2001, in consultation with employee
 20 organizations, advocates, consumers, and family members, develop
 21 a poster that encourages staff, residents, and visitors to report
 22 suspected or known abuse and provides information on how to
 23 make these reports.

24 (d) A failure to report *an incident* under subdivision (a) shall
 25 be deemed a class B violation as provided in Section 1424.6 of
 26 the Health and Safety Code. *Code if the incident occurs in a distinct*
 27 *part long-term health care facility. If the incident occurs in the*
 28 *general acute care hospital or acute psychiatric hospital portion*
 29 *of the developmental center, a failure to report the incident under*
 30 *subdivision (a) shall be subject to a civil penalty specified in*
 31 *Section 1280.4 of the Health and Safety Code.*

32 ~~SEC. 4.~~

33 *SEC. 6.* Section 4427.7 is added to the Welfare and Institutions
 34 Code, to read:

35 4427.7. (a) Designated investigators of developmental centers
 36 shall ~~authorize~~ *request* a sexual assault forensic medical
 37 examination for any resident of a developmental center who is a
 38 victim or *reasonably* suspected *to be a* victim of sexual assault,
 39 as defined in Section 15610.63, performed at an appropriate facility
 40 off the grounds of the developmental center in accordance with

1 Sections 13823.5 to 13823.12, inclusive, of the Penal Code, which
2 includes, but is not limited to, the requirement that the law
3 enforcement agency having jurisdiction over the city or county in
4 which the developmental center is located be notified by the person
5 performing the sexual assault forensic medical examination *and*
6 *that consent is obtained* as required by ~~subdivision (a)~~ *subdivisions*
7 *(a) and (c)* of Section 13823.11 of the Penal Code.

8 (b) The sexual assault forensic medical examination described
9 in subdivision (a) may be performed at a developmental center by
10 an independent sexual assault forensic examiner designated to
11 perform examinations of victims of sexual assault in the jurisdiction
12 of the developmental center only if it is deemed safer for the victim
13 and the developmental center's examination facilities are equipped
14 with forensic examination and evidence collection capability
15 comparable to that of the designated community examination
16 facility, as determined by the independent sexual assault forensic
17 examiner.