

## Senate Bill No. 651

### CHAPTER 724

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.

[Approved by Governor October 10, 2013. Filed with  
Secretary of State October 10, 2013.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 651, 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 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 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.

This bill would incorporate additional changes in Section 4427.5 of the Welfare and Institutions Code made by AB 602, to become operative if AB 602 and this bill are both enacted and become effective on or before January 1, 2014, and this bill is enacted last.

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

SECTION 1. Section 1280.4 of the Health and Safety Code is amended to read:

1280.4. (a) If a licensee of a health facility licensed under subdivision (a), (b), or (f) of Section 1250 fails to report an adverse event pursuant to Section 1279.1, the department may assess the licensee a civil penalty in an amount not to exceed one hundred dollars (\$100) for each day that the adverse event is not reported following the initial five-day period or 24-hour period, as applicable, pursuant to subdivision (a) of Section 1279.1.

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

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

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

1418. As used in this chapter:

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

- (1) Skilled nursing facility.
- (2) Intermediate care facility.
- (3) Intermediate care facility/developmentally disabled.
- (4) Intermediate care facility/developmentally disabled habilitative.
- (5) Intermediate care facility/developmentally disabled-nursing.
- (6) Congregate living health facility.
- (7) Nursing facility.
- (8) Intermediate care facility/developmentally disabled-continuous nursing.

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

(c) “Long-term health care facility” does not include a general acute care hospital or an acute psychiatric hospital, except for that distinct part of the

hospital that provides skilled nursing facility, intermediate care facility, intermediate care facility/developmentally disabled, or pediatric day health and respite care facility services.

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

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

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

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

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

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

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

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

(A) A death.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A failure to report an incident under subdivision (a) shall be deemed a class B violation as provided in Section 1424.6 of the Health and Safety Code if the incident occurs in a distinct part long-term health care facility.

If the incident occurs in the general acute care hospital or acute psychiatric hospital portion of the developmental center, a failure to report the incident under subdivision (a) shall be subject to a civil penalty specified in Section 1280.4 of the Health and Safety Code.

SEC. 5.5. Section 4427.5 of the Welfare and Institutions Code is amended to read:

4427.5. (a) (1) A developmental center shall immediately, but no later than within two hours of the developmental center observing, obtaining knowledge of, or suspecting abuse, report the following incidents involving a resident to the local law enforcement agency having jurisdiction over the city or county in which the developmental center is located, regardless of whether the Office of Protective Services has investigated the facts and circumstances relating to the incident:

(A) A death.

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

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

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

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

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

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

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

(4) This section does not prevent the developmental center from reporting any other criminal act constituting a danger to the health or safety of the residents of the developmental center to the local law enforcement agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4427.7. (a) Designated investigators of developmental centers shall request a sexual assault forensic medical examination for any resident of a developmental center who is a victim or reasonably suspected to be a victim of sexual assault, as defined in Section 15610.63, performed at an appropriate facility off the grounds of the developmental center in accordance with Sections 13823.5 to 13823.12, inclusive, of the Penal Code, which includes, but is not limited to, the requirement that the law enforcement agency having jurisdiction over the city or county in which the developmental center is located be notified by the person performing the sexual assault forensic medical examination and that consent is obtained as required by subdivisions (a) and (c) of Section 13823.11 of the Penal Code.

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

SEC. 7. Section 5.5 of this bill incorporates amendments to Section 4427.5 of the Welfare and Institutions Code proposed by both this bill and Assembly Bill 602. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2014, (2) each bill amends

Section 4427.5 of the Welfare and Institutions Code, and (3) this bill is enacted after Assembly Bill 602, in which case Section 5 of this bill shall not become operative.

O