

Introduced by Senator PanJanuary 27, 2015

An act to add Section 1262.3 to the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 145, as introduced, Pan. Health facilities: patient transporting.

Existing law provides for the licensure and regulation of health facilities by the State Department of Health Care Services. A violation of these provisions is a crime.

Existing law requires each hospital to have in effect a written discharge planning policy and process that requires appropriate arrangements for posthospital care and a process that requires that each patient be informed, orally or in writing, of the continuing care requirements following discharge from the hospital, as specified.

Existing law also prohibits a hospital from causing the transfer of homeless patients from one county to another county for the purpose of receiving supportive services from a social service agency, health care service provider, or nonprofit social service agency within the other county, without prior notice and authorization, as specified.

This bill would prohibit a general acute care hospital, acute psychiatric hospital, or special hospital from causing a patient with a blood alcohol content of 0.8% percent or greater to be transported to another location except when the patient is either medically stabilized or appropriately transferred to another health facility pursuant to another provision of law. The bill would make the violation of that provision subject to civil penalties, as specified. The bill would require these civil penalties, upon appropriation, to be used exclusively for the provision of posthospital

recuperative beds, transitional housing, and mental health counseling programs for the homeless.

By expanding the scope of an existing crime, this bill would result in a state-mandated local program.

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 no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 1262.3 is added to the Health and Safety
2 Code, to read:

3 1262.3. (a) A general acute care hospital, acute psychiatric
4 hospital, or special hospital shall not cause a patient with a blood
5 alcohol content of 0.08 percent or greater to be transported to
6 another location, including, but not limited to, police custody, a
7 correctional facility, or a county jail, except when the patient is
8 medically stabilized or appropriately transferred to another licensed
9 health facility pursuant to another law.

10 (b) If the department determines that a hospital has violated
11 subdivision (a), it shall consider, at a minimum, all of the following
12 actions:

13 (1) Assessment of an administrative penalty pursuant to Section
14 1280.1 or 1280.3.

15 (2) Referral to appropriate authorities for consideration of
16 commencing an action for violation of Section 1290.

17 (c) This section shall not apply to any of the following:

18 (1) Patients in state hospitals operated and administered by the
19 State Department of State Hospitals who are civilly or criminally
20 committed and subject to transfer to the State Department of
21 Corrections and Rehabilitation, the Forensic Conditional Release
22 Program, or to a court for further proceedings.

23 (2) Patients who remain under the jurisdiction of the State
24 Department of Corrections and Rehabilitation.

25 (3) Residents of state developmental centers operated and
26 administered by the State Department of Developmental Services

1 who are discharged to the community pursuant to the Lanterman
2 Developmental Disabilities Services Act, and in accordance with
3 an individual program plan, as defined in Section 4646 of the
4 Welfare and Institutions Code, developed specifically for the
5 resident.

6 (d) (1) Upon a second violation of subdivision (a), a general
7 acute care hospital, acute psychiatric hospital, or special hospital,
8 shall be subject to a civil penalty of one hundred fifty thousand
9 dollars (\$150,000). The Attorney General, a district attorney, a
10 city attorney of a city having a population in excess of 750,000,
11 or a city attorney of a city and county, may bring a civil action in
12 the name of the people of the State of California seeking civil
13 penalties, preventive relief, including an application for a
14 permanent or temporary injunction, restraining order, or other
15 order against the health facility.

16 (2) Any general acute care hospital, acute psychiatric hospital,
17 or special hospital criminally convicted of a violation of
18 subdivision (a), that has been previously penalized for two separate
19 violations of subdivision (a) may be subject to civil penalties of
20 no less than three hundred thousand dollars (\$300,000).

21 (3) In determining the civil penalty to be imposed pursuant to
22 this subdivision, the court shall consider all relevant facts,
23 including, but not limited to, all of the following:

24 (A) Whether the violation exposed the patient to a risk of death
25 or serious physical harm.

26 (B) Whether the violation had a direct or immediate relationship
27 to the health, safety, or security of the patient.

28 (C) Evidence, if any, of willfulness.

29 (D) The number of repeated violations.

30 (E) The presence or absence of good faith efforts by the
31 defendant to prevent the violation.

32 (4) Any investigative costs incurred in the enforcement of this
33 subdivision, including, but not limited to, expert's and attorney's
34 fees incurred by the Attorney General, district attorney, or city
35 attorney in carrying out this subdivision shall be recoverable from
36 the liable general acute care hospital, acute psychiatric hospital,
37 or special hospital.

38 (5) If the action authorized by this subdivision is brought by the
39 Attorney General, the civil penalty collected shall be paid to the
40 General Fund. If the action is brought by a district attorney, the

1 civil penalty collected shall be paid to the treasurer of the county
2 in which the judgment was entered. If the action is brought by a
3 city attorney, the civil penalty collected shall be paid to the
4 treasurer of the city in which the judgment was entered. The funds
5 described in this paragraph shall, upon appropriation, be used
6 exclusively for the provision of posthospital recuperative beds,
7 transitional housing, and mental health counseling programs for
8 the homeless.

9 (6) Nothing in this subdivision shall preclude criminal
10 prosecution or civil action under any other law. Furthermore,
11 nothing in this subdivision shall limit or abridge the authority of
12 any city or county to adopt an ordinance authorizing investigations
13 or inspections, or implementing and enforcing restrictions dealing
14 with patient transportation.

15 (e) Nothing in this section shall be construed to contradict any
16 other law related to workplace violence prevention, including, but
17 not limited to, workplace violence standards adopted by the
18 Occupational Safety and Health Standards Board.

19 SEC. 2. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.