

AMENDED IN SENATE MAY 3, 2000
AMENDED IN SENATE APRIL 13, 2000

SENATE BILL

No. 1534

Introduced by Senator Perata
(Coauthor: Assembly Member Steinberg)

February 17, 2000

An act to amend Sections 5325, 5325.1, 5326.9, 5500, 5520, 5521, 5522, 5523, 5541, 5542, and 5550 of, and to add Sections 5500.1, 5500.2, 5500.3, 5544.1, 5545.1, 5545.2, and 5545.3 to, the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

SB 1534, as amended, Perata. Mental health: patient advocacy: special programs.

Under existing law the State Department of Mental Health is required to contract with a single nonprofit agency for the provision of mental health patient advocacy services. The services include conducting investigations of abuse, neglect, and death of persons with mental disabilities residing in state hospitals.

Existing law provides that each person involuntarily detained for evaluation or treatment under provisions of this part, each person admitted as a voluntary patient for psychiatric evaluation or treatment to any health facility, as defined, in which psychiatric evaluation or treatment is offered, and each mentally retarded person committed to a state hospital shall have certain rights.

This bill would revise that provision to eliminate the reference to mentally retarded persons committed to a state hospital, and would include each person with psychiatric disabilities receiving residential care at a community care facility, as defined, within the scope of that requirement.

This bill would require the Director of Mental Health to collect statistics on the provision of advocacy services by the counties.

This bill would require each county to provide for county patients' rights advocacy services and would require each county to provide those services at not less than a specified level.

The bill would also require the Director of Mental Health to provide patients' rights advocacy services in a county that does not meet those requirements and would require the county to pay that office for the provision of those services. By requiring counties to provide that level of services or to pay for the provision of those services, this bill would increase county responsibilities for the provision of those services, and would result in a state-mandated local program.

This bill would revise the scope of responsibilities of a county patients' rights advocate, and the scope of authority to refer complaints to government agencies. By increasing the scope of those responsibilities, this bill would increase county responsibilities in the administration of patients' rights advocacy, and would result in a state-mandated local program.

This bill would revise the scope of the right of a county patients' rights advocate for access to records and information for certain purposes, and to facilities for the purpose of hearing, investigating, and resolving complaints by or on behalf of individuals in psychiatric facilities.

Existing law authorizes the court to impose a civil penalty on any person or facility found in violation of a prohibition against discrimination or retaliatory activities against certain persons participating in filing a complaint or providing information regarding complaints by individuals in psychiatric facilities and for obstruction of a county patients' rights advocate in the performance of his or her duties.



~~This bill would increase the civil penalty and would authorize the county director of mental health to impose the penalty.~~ The bill would authorize certain persons to bring an action in court to impose and collect the civil penalties if the ~~local mental health director,~~ the district attorney; or the Attorney General declines to enforce the penalties.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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 5325 of the Welfare and
2 Institutions Code is amended to read:
3 5325. Each person involuntarily detained for
4 evaluation or treatment under provisions of this part,
5 each person admitted as a voluntary patient for
6 psychiatric evaluation or treatment to any health facility,
7 as defined in Section 1250 of the Health and Safety Code,
8 in which psychiatric evaluation or treatment is offered,
9 and each person with psychiatric disabilities receiving
10 residential care at a community care facility, as defined
11 in subdivision (a) of Section 1502 of the Health and Safety
12 Code, shall have the following rights, a list of which shall
13 be prominently posted in the predominant languages of
14 the community and explained in a language or modality
15 accessible to the patient in all facilities providing such
16 services and otherwise brought to his or her attention by
17 such additional means as the Director of Mental Health
18 may designate by regulation:



- 1 (a) To wear his or her own clothes; to keep and use his
2 or her own personal possessions including his or her toilet
3 articles; and to keep and be allowed to spend a reasonable
4 sum of his or her own money for canteen expenses and
5 small purchases.
- 6 (b) To have access to individual storage space for his
7 or her private use.
- 8 (c) To see visitors each day.
- 9 (d) To have reasonable access to telephones, both to
10 make and receive confidential calls or to have such calls
11 made for them.
- 12 (e) To have ready access to letterwriting materials,
13 including stamps, and to mail and receive unopened
14 correspondence.
- 15 (f) To refuse convulsive treatment including, but not
16 limited to, any electroconvulsive treatment, any
17 treatment of the mental condition which depends on the
18 induction of a convulsion by any means, and insulin coma
19 treatment.
- 20 (g) To refuse psychosurgery. Psychosurgery is defined
21 as those operations currently referred to as lobotomy,
22 psychiatric surgery, and behavioral surgery and all other
23 forms of brain surgery if the surgery is performed for the
24 purpose of any of the following:
- 25 (1) Modification or control of thoughts, feelings,
26 actions, or behavior rather than the treatment of a known
27 and diagnosed physical disease of the brain.
- 28 (2) Modification of normal brain function or normal
29 brain tissue in order to control thoughts, feelings, actions,
30 or behavior.
- 31 (3) Treatment of abnormal brain function or
32 abnormal brain tissue in order to modify thoughts,
33 feelings, actions or behavior when the abnormality is not
34 an established cause for those thoughts, feelings, actions,
35 or behavior.
- 36 Psychosurgery does not include prefrontal sonic
37 treatment wherein there is no destruction of brain tissue.
38 The Director of Mental Health shall promulgate
39 appropriate regulations to assure adequate protection of
40 patients' rights in such treatment.



1 (h) To see and receive the services of a patient
2 advocate who has no direct or indirect clinical or
3 administrative responsibility for the person receiving
4 mental health services.

5 (i) Other rights, as specified by regulation.

6 Each patient shall also be given notification in a
7 language or modality accessible to the patient of other
8 constitutional and statutory rights which are found by the
9 State Department of Mental Health to be frequently
10 misunderstood, ignored, or denied.

11 Upon admission to a facility each patient shall
12 immediately be given a copy of a State Department of
13 Mental Health prepared patients' rights handbook.

14 The State Department of Mental Health shall prepare
15 and provide the forms specified in this section and in
16 Section 5157.

17 The rights specified in this section may not be waived
18 by the person's parent, guardian, or conservator.

19 SEC. 2. Section 5325.1 of the Welfare and Institutions
20 Code is amended to read:

21 5325.1. Persons with mental illness have the same
22 legal rights and responsibilities guaranteed all other
23 persons by the Federal Constitution and laws and the
24 Constitution and laws of the State of California, unless
25 specifically limited by federal or state law or regulations.
26 No otherwise qualified person by reason of having been
27 involuntarily detained for evaluation or treatment under
28 provisions of this part or having been admitted as a
29 voluntary patient to any health facility, as defined in
30 Section 1250 of the Health and Safety Code, in which
31 psychiatric evaluation or treatment is offered, or such a
32 person with a psychiatric disability receiving residential
33 care at a community care facility, as defined in
34 subdivision (a) of Section 1502 of the Health and Safety
35 Code, shall be excluded from participation in, be denied
36 the benefits of, or be subjected to discrimination under
37 any program or activity, which receives public funds.

38 It is the intent of the Legislature that persons with
39 mental illness shall have rights including, but not limited
40 to, the following:



1 (a) A right to treatment services which promote the
2 potential of the person to function independently.
3 Treatment should be provided in ways that are least
4 restrictive of the personal liberty of the individual.

5 (b) A right to dignity, privacy, and humane care.

6 (c) A right to be free from harm, including
7 unnecessary or excessive physical restraint, isolation,
8 medication, abuse, or neglect. Medication shall not be
9 used as punishment, for the convenience of staff, as a
10 substitute for program, or in quantities that interfere with
11 the treatment program.

12 (d) A right to prompt medical care and treatment.

13 (e) A right to religious freedom and practice.

14 (f) A right to participate in appropriate programs of
15 publicly supported education.

16 (g) A right to social interaction and participation in
17 community activities.

18 (h) A right to physical exercise and recreational
19 opportunities.

20 (i) A right to be free from hazardous procedures.

21 SEC. 3. Section 5326.9 of the Welfare and Institutions
22 Code is amended to read:

23 5326.9. (a) Any alleged or suspected violation of the
24 rights described in Chapter 2 (commencing with Section
25 5150) shall be investigated by the local director of mental
26 health, or his or her designee. Violations of Sections 5326.2
27 to 5326.8, inclusive, shall also be investigated by the
28 Director of Mental Health, or his or her designee. If it is
29 determined by the local director of mental health or
30 Director of Mental Health that a right has been violated,
31 a formal notice of violation shall be issued.

32 (b) Either the local director of mental health or the
33 Director of Mental Health upon issuing a notice of
34 violation may take any or all of the following action:

35 (1) Assign a specified time period during which the
36 violation shall be corrected.

37 (2) Referral to the Medical Board of California or
38 other professional licensing agency. Such board shall
39 investigate further, if warranted, and shall subject the



1 individual practitioner to any penalty the board finds
2 necessary and is authorized to impose.

3 (3) Revoke a facility's designation and authorization
4 under Section 5404 to evaluate and treat persons detained
5 involuntarily.

6 (4) Refer any violation of law to a local district
7 attorney or the Attorney General for prosecution in any
8 court with jurisdiction.

9 (5) Collect a civil penalty from any person or facility
10 in accordance with subdivision (d).

11 (c) Any physician who intentionally violates Sections
12 5326.2 to 5326.8, inclusive, shall be subject to a civil
13 penalty of not more than five thousand dollars (\$5,000)
14 for each violation. Such penalty may be assessed and
15 collected in a civil action brought by the Attorney
16 General in a superior court. Such intentional violation
17 shall be grounds for revocation of license.

18 (d) Any person or facility found to have knowingly
19 violated the provisions of the first paragraph of Section
20 5325.1 or to have denied without good cause any of the
21 rights specified in Section 5325 shall pay a civil penalty of
22 ~~one hundred dollars (\$100), as determined by the court,~~
23 ~~of fifty dollars (\$50) per day during the time in which the~~
24 ~~violation is not corrected, commencing on the day on~~
25 ~~which a notice of violation was issued, not to exceed one~~
26 ~~thousand dollars (\$1,000), for each and every violation~~
27 ~~that the county mental health director has determined to~~
28 ~~have occurred, except that any liability under this~~
29 ~~provision shall be offset by an amount equal to a fine or~~
30 ~~penalty imposed for the same violation under the~~
31 ~~provisions of Sections 1423 to 1425, inclusive, or 1428 of the~~
32 ~~Health and Safety Code. These penalties shall be~~
33 ~~deposited in the mental health subaccount of the local~~
34 ~~health and welfare trust fund of the county, as described~~
35 ~~in Section 5701, in which the violation occurred. Any~~
36 ~~person or facility who is sanctioned or fined by the local~~
37 ~~mental health director pursuant to this paragraph may~~
38 ~~file an appeal of the sanction or fine within 15 days of~~
39 ~~receiving formal notice of the sanction. If the local mental~~
40 ~~health director fails to enforce the civil penalties under~~



1 ~~this paragraph, the~~ *The* local district attorney or the
2 Attorney General shall enforce this section in any court
3 with jurisdiction. Where the State Department of Health
4 Services, under the provisions of Sections 1423 to 1425,
5 inclusive, of the Health and Safety Code, determines that
6 no violation has occurred, the provisions of paragraph (4)
7 of subdivision (b) shall not apply. If the ~~local mental~~
8 ~~health director, district attorney,~~ *district attorney* or the
9 Attorney General declines to enforce the civil penalties
10 provided for in this paragraph, the person whose right or
11 rights were violated by the person or facility subject to the
12 penalties under this subdivision may bring a private
13 action in any court of jurisdiction and may collect the civil
14 penalties. Any person who privately enforces the right of
15 action authorized by this subdivision shall not be required
16 to prove any actual damages.

17 (e) The remedies provided by this subdivision shall be
18 in addition to and not in substitution for any other
19 remedies which an individual may have under law.

20 SEC. 4. Section 5500 of the Welfare and Institutions
21 Code is amended to read:

22 5500. As used in this chapter:

23 (a) "Advocacy" means those activities undertaken on
24 behalf of persons who are receiving, *are entitled to*
25 *receive*, or have received mental health services to
26 protect their rights or to secure or upgrade treatment or
27 other services to which they are entitled and includes, but
28 is not limited to, representation of patients receiving
29 mental health treatment at administrative hearings *as*
30 *described in subdivision (f) of Section 5520.*

31 (b) "Mental health client" or "client" means any
32 person who is receiving, *is entitled to receive*, or has
33 received services from a mental health facility, service or
34 program and who has personally or through a guardian ad
35 litem, entered into an agreement with a county patients'
36 rights advocate for the provision of advocacy services.

37 (c) "Mental health facilities, services, or programs"
38 means any publicly operated or supported mental health
39 *or community care* facility or program; any private
40 facility or program licensed or operated for health



1 purposes providing services to mentally disordered
2 persons; and publicly supported agencies providing other
3 than mental health services to mentally disordered
4 clients.

5 (d) “Independent of providers of service” means that
6 the advocate has no direct or indirect clinical or
7 administrative responsibility for any recipient of mental
8 health services in any mental health facility, program, or
9 service for which he or she performs advocacy activities.

10 (e) “County patients’ rights advocate” means any
11 advocate appointed, or whose services are contracted for,
12 by a local mental health director.

13 SEC. 5. Section 5500.1 is added to the Welfare and
14 Institutions Code, to read:

15 5500.1. Each county shall provide advocacy services
16 as defined in subdivision (a) of Section 5500 at a level that
17 is at least minimally adequate. Each county shall provide
18 at least one full-time equivalent advocate, and in no case
19 shall a county provide advocacy services at a ratio of less
20 than one full-time equivalent advocate for each 250,000
21 county population. In determining the minimum
22 number of advocates for a county, the Director of Mental
23 Health shall consider factors including, but not limited to,
24 the average annual number of involuntary
25 hospitalizations in the county, the number of facilities
26 designated to provide involuntary mental health services,
27 the number of institutes for mental disease, skilled
28 nursing facilities, community-based mental health clinics,
29 and other community care facilities in the county.

30 SEC. 6. Section 5500.2 is added to the Welfare and
31 Institutions Code, to read:

32 5500.2. (a) The Director of Mental Health shall
33 collect and review relevant statistics relating to the
34 advocacy services being provided by each county, on a
35 quarterly basis, to determine the adequacy of advocacy
36 services in each county, including, but not limited to,
37 staffing and the functions of the advocates.

38 (b) The Director of Mental Health shall annually
39 collect, publish, and make available to the Legislature
40 aggregate data regarding patients’ rights complaints,



1 which shall include at least the number of complaints, the
2 type or nature of the complaints, the source of the
3 complaints, and the resolution of the complaints,
4 including the timeframe for the resolution of the
5 complaints.

6 SEC. 7. Section 5500.3 is added to the Welfare and
7 Institutions Code, to read:

8 5500.3. If the director determines that a county has no
9 appointed county patients' rights advocate or the
10 appointed county patients' rights advocate does not meet
11 the requirements set forth in subdivision (a) of Section
12 5500, the Director of Mental Health shall require the
13 entity contracted with pursuant to Section 5370.2, to
14 provide advocacy services until the county mental health
15 director appoints a county patients' rights advocate who
16 meets those requirements. The county shall reimburse
17 that entity for the provision of those advocacy services
18 provided pursuant to this section.

19 SEC. 8. Section 5520 of the Welfare and Institutions
20 Code is amended to read:

21 5520. Each local mental health director shall appoint,
22 or contract for the services of, one or more county
23 patients' rights advocates. The duties of these advocates
24 shall include, but not be limited to, the following:

25 (a) To receive and investigate complaints from or
26 concerning recipients of mental health services residing
27 in licensed health or community care facilities regarding
28 abuse, unreasonable denial or punitive withholding of
29 rights guaranteed under the provisions of Division 5
30 (commencing with Section 5000).

31 (b) To monitor mental health facilities, services and
32 programs for compliance with statutory and regulatory
33 patients' rights provisions.

34 (c) To provide training and education about mental
35 health law and patients' rights to mental health providers.

36 (d) To ensure that recipients of mental health services
37 in all licensed health and community care facilities are
38 notified of their rights.

39 (e) To exchange information and cooperate with the
40 Patients' Rights Office.



1 (f) To represent patients at certification review
2 hearings pursuant to Section 5256.4.

3 (g) To represent patients at capacity hearings
4 pursuant to Section 5333.

5 (h) To provide assistance to minors who are eligible
6 for, and request, an independent clinical review,
7 pursuant to Section 6002.20.

8 (i) To provide assistance to recipients of public mental
9 health services concerning complaints or grievances
10 regarding those services.

11 (j) To advise and represent minors who are eligible
12 for, and request, a hearing pursuant to *In re Roger S.*
13 ((1977) 19 Cal.3d 921), at the hearing.

14 (k) To maintain records regarding numbers of
15 administrative hearings in which the patients' rights
16 advocate provides representation, and to maintain
17 records of patients' rights complaints alleged against
18 licensed and unlicensed health and community care
19 facilities, in accordance with subdivision (b) of Section
20 5500.2.

21 This section does not constitute a change in, but is
22 declarative of the existing law.

23 SEC. 9. Section 5521 of the Welfare and Institutions
24 Code is amended to read:

25 5521. It is the intent of the Legislature that legal
26 representation regarding changes in client legal status or
27 conditions and other areas covered by statute providing
28 for local public defender or court-appointed attorney
29 representation, shall remain the responsibility of local
30 agencies, in particular the county public defender.
31 County patients' rights advocates, in the execution of
32 their duties and responsibilities defined in Section 5520,
33 shall not duplicate, replace, or conflict with these existing
34 or mandated local legal representations. This section shall
35 not be construed to prevent maximum cooperation
36 between legal representatives and providers of advocacy
37 services.

38 SEC. 10. Section 5522 of the Welfare and Institutions
39 Code is amended to read:



1 5522. County patients' rights advocates may conduct
2 investigations if the advocate finds that there is probable
3 cause to believe that the rights of a past or present
4 recipient of mental health services have been, may have
5 been, or may be violated.

6 SEC. 11. Section 5523 of the Welfare and Institutions
7 Code is amended to read:

8 5523. (a) Notwithstanding any other provision of
9 law, and without regard to the existence of a guardianship
10 or conservatorship, a recipient of mental health services
11 is presumed competent for the purpose of entering into
12 an agreement with county patients' rights advocates for
13 the provision of advocacy services unless found by the
14 superior court to be incompetent to enter into an
15 agreement with an advocate and a guardian ad litem is
16 appointed for such purposes.

17 (b) In conducting investigations in cases in which an
18 advocate has not received a request for advocacy services
19 from a recipient of mental health services or from
20 another person on behalf of a recipient of mental health
21 services, the advocate shall notify the treating
22 professional responsible for the care of any recipient of
23 services whom the advocate wishes to interview, and the
24 facility, service, or program administrator, of his or her
25 intention to conduct such an interview. Whenever the
26 treating professional is reasonably available for
27 consultation, the advocate shall consult with the
28 professional concerning the appropriate time to conduct
29 the interview.

30 (c) Any agreement with any county patients' rights
31 advocate entered into by a mental health client shall be
32 made knowingly and voluntarily or by a guardian ad
33 litem. It shall be in a language or modality which the
34 client understands. Any such agreement may, at any
35 time, be revoked by the client or by the guardian ad litem,
36 whoever has entered into the agreement, either in
37 writing or by oral declaration to the advocate.

38 (d) Nothing in this chapter shall be construed to
39 prohibit a recipient of mental health services from being



1 represented by public or private legal counsel of his or
2 her choice.

3 (e) The remedies provided by this chapter shall be in
4 addition to any other remedies which may be available to
5 any person, and the failure to pursue or exhaust the
6 remedies or engage in the procedures provided by this
7 chapter shall not preclude the invocation of any other
8 remedy.

9 (f) Investigations concerning violations of a past
10 recipients' rights shall be limited to cases involving
11 discrimination, cases indicating the need for education or
12 training, or cases having a direct bearing on violations of
13 the right of a current recipient. This subdivision is not
14 intended to constrain the routine monitoring for
15 compliance with patients' rights provisions described in
16 subdivision (b) of Section 5520. County patients' rights
17 advocates shall have access to any and all records
18 maintained by a mental health facility or provider for
19 investigative and routine monitoring purposes.

20 SEC. 12. Section 5541 of the Welfare and Institutions
21 Code is amended to read:

22 5541. (a) A specific authorization by the client or by
23 the guardian ad litem is necessary for a county patients'
24 rights advocate to have access to, copy or otherwise use
25 confidential records or information pertaining to the
26 client. Such an authorization shall be given knowingly
27 and voluntarily by a client or guardian ad litem and shall
28 be in writing or be reduced to writing. The client or the
29 guardian ad litem, whoever has entered into the
30 agreement, may revoke such authorization at any time,
31 either in writing or by oral declaration to the advocate.

32 (b) When specifically authorized by the client or the
33 guardian ad litem, the county patients' rights advocate
34 may inspect any and all records and information
35 necessary to carry out his or her responsibilities under this
36 chapter.

37 SEC. 13. Section 5542 of the Welfare and Institutions
38 Code is amended to read:

39 5542. County patients' rights advocates shall have the
40 right to inspect or copy, or both, any records or other



1 materials in the possession of any mental health program,
2 services, or facilities, or city, county or state agencies
3 relating to an investigation on behalf of a client or which
4 indicate compliance or lack of compliance with laws and
5 regulations governing patients' rights, including, but not
6 limited to, reports on the use of restraints or seclusion, and
7 autopsy reports.

8 SEC. 14. Section 5544.1 is added to the Welfare and
9 Institutions Code, to read:

10 5544.1. Notwithstanding any other provision of law,
11 all records and files of the patients' rights advocate
12 relating to any complaint or investigation made pursuant
13 to this chapter and the identities of complainants,
14 witnesses, patients, or residents shall remain confidential,
15 unless the disclosure is authorized by the patient resident
16 or his or her legal representative, the disclosure is
17 required by court order, or the release of the information
18 is to a law enforcement agency, public protective services
19 agency, or a licensing or certification agency in a manner
20 that is consistent with state and federal laws and
21 regulations.

22 SEC. 15. Section 5545.1 is added to the Welfare and
23 Institutions Code, to read:

24 5545.1. (a) County patients' rights advocates shall
25 have the right of entry to all facilities, programs, or
26 services for the purpose of hearing, investigating, and
27 resolving complaints by, or to render advice to,
28 individuals who have psychiatric disabilities who are, or
29 have been, patients or residents of the facilities, at any
30 time deemed necessary and reasonable to the advocate to
31 effectively carry out his or her duties under this chapter.

32 (b) Nothing in this chapter shall be construed to
33 restrict, limit, or increase any existing right of any
34 organization or individual not described in subdivision
35 (a) to enter, or provide assistance to patients or residents
36 of, mental health or community care facilities.

37 (c) Nothing in this chapter shall restrict any right or
38 privilege of any patient or resident of any facility to
39 receive visitors of his or her choice.



1 SEC. 16. Section 5545.2 is added to the Welfare and
2 Institutions Code, to read:

3 5545.2. (a) A county patient's rights advocate may
4 refer any complaint to any appropriate state or local
5 government agency.

6 (b) The following state licensing authorities shall give
7 priority to any complaint referred to them by the
8 patients' rights advocate, except that any complaint
9 alleging an immediate threat to one or more residents'
10 health or safety may be given first priority over that
11 complaint:

12 (1) The Licensing and Certification Division of the
13 State Department of Health Services.

14 (2) The Community Care Licensing Division of the
15 State Department of Social Services.

16 (3) The State Department of Mental Health.

17 (4) The State Board of Nursing Home Administrators.

18 (5) The Board of Registered Nursing.

19 (6) The Medical Board of California.

20 (7) The California State Board of Pharmacy.

21 (8) The Board of Vocational Nurse and Psychiatric
22 Technician Examiners.

23 (9) The American Occupational Therapy
24 Certification Board.

25 (c) Any licensing authority that responds to a
26 complaint against a health facility or community care
27 center facility that was referred to the authority by the
28 county patients' rights advocate shall forward to the
29 county patients' rights advocate, the county director of
30 mental health, and any state department responsible for
31 certifying the facility or program, copies of related
32 inspection reports and plans of correction and notify the
33 county patients' rights advocate, the county director of
34 mental health, and any state department responsible for
35 certifying the facility or program of any citations and civil
36 penalties imposed on the facility.

37 SEC. 17. Section 5545.3 is added to the Welfare and
38 Institutions Code, to read:

39 5545.3. Any licensing authority that receives a
40 complaint pursuant to Section 5545.2 shall annually



1 collect and publish and make available to the Legislature
2 aggregate data regarding patients' rights complaints,
3 which shall include at least the number of complaints, the
4 type or nature of the complaints, the source of the
5 complaints, and the resolution of the complaints,
6 including the timeframe for the resolution.

7 SEC. 18. Section 5550 of the Welfare and Institutions
8 Code is amended to read:

9 5550. (a) Any person participating in filing a
10 complaint or providing information pursuant to this
11 chapter or participating in a judicial proceeding resulting
12 therefrom shall be presumed to be acting in good faith
13 and unless the presumption is rebutted shall be immune
14 from any liability, civil or criminal, and shall be immune
15 from any penalty, sanction, or restriction that otherwise
16 might be incurred or imposed.

17 (b) No person shall knowingly obstruct any county
18 patients' rights advocate in, or retaliate against any
19 county patients' rights advocate for, the performance of
20 duties as described in this chapter, including, but not
21 limited to, access to clients or potential clients, or to their
22 records, whether financial, medical, or otherwise, or to
23 other information, materials, or records, or otherwise
24 violate the provisions of this chapter.

25 (c) No facility to which the provisions of Section 5325
26 are applicable shall discriminate or retaliate in any
27 manner against a patient or employee on the basis that
28 the patient, resident, or employee has initiated or
29 participated in any proceeding specified in this chapter.
30 Any attempt by a facility to expel a patient or resident, or
31 any discriminatory treatment of a patient, who, or upon
32 whose behalf, a complaint has been submitted to a county
33 patients' rights advocate within 120 days of the filing of
34 the complaint shall raise a rebuttable presumption that
35 such action was taken by the facility in retaliation for the
36 filing of the complaint.

37 (d) No county patients' rights advocate shall
38 knowingly violate any provision of this chapter
39 concerning client privacy and the confidentiality of
40 personally identifiable information.



1 (e) Any person or facility found in violation of
2 subdivision (b) or (d) shall pay a civil penalty, as
3 determined by a court ~~or the local director of mental~~
4 ~~health~~, of not less than ~~one thousand dollars (\$1,000), or~~
5 ~~more than one hundred thousand dollars (\$100,000);~~ *one*
6 *hundred dollars (\$100) or more than one thousand dollars*
7 *(\$1,000)*, which shall be deposited in the county general
8 funds.

9 SEC. 19. Notwithstanding Section 17610 of the
10 Government Code, if the Commission on State Mandates
11 determines that this act contains costs mandated by the
12 state, reimbursement to local agencies and school
13 districts for those costs shall be made pursuant to Part 7
14 (commencing with Section 17500) of Division 4 of Title
15 2 of the Government Code. If the statewide cost of the
16 claim for reimbursement does not exceed one million
17 dollars (\$1,000,000), reimbursement shall be made from
18 the State Mandates Claims Fund.

