

AMENDED IN SENATE APRIL 30, 2009

AMENDED IN SENATE APRIL 16, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 352

Introduced by Senator Dutton

February 25, 2009

An act to amend Sections 1536.1, 1538.5, and 1567.3 of the Health and Safety Code, and to amend Section 740 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 352, as amended, Dutton. Juvenile offenders: health facilities.

(1) Under existing law, before the placement of certain minors who are wards of the court due to a violation of law may be made in an out-of-county facility, the parole or probation officer in the county of residence is required to send written notice of the placement, including specified information, to the probation officer of the receiving county.

This bill would allow the notice to be made in writing, by fax, or electronic transmission. Additionally, the bill would require gang affiliation, as defined, to be included in the information sent to the receiving county. The bill would also require that a copy of the notice be sent, at the same time it is sent to the receiving county, to the community care facility where the ward is being placed, and would require the community care facility to maintain a copy of the notice on file.

(2) Under existing law, if a ward of the court, as described above, who is placed in an out-of-county community care facility, has his or her board and care funded through the Aid to Families with Dependent

Children-Foster Care program, a plan for supervision and visitation is required to be developed by the county of residence.

This bill would require, in addition to the plan for supervision and visitation, that the sending county document information regarding any known gang affiliation or dangerous behavior that indicates the ward may pose a safety concern to the receiving county. It would also require information related to gang affiliation to be included in a case plan required to be developed for the ward pursuant to existing law.

(3) Under existing law, a group home is required to annually report all incident reports involving a response by local law enforcement or emergency services personnel that were sent to a placement agency other than the county in which the group home is located.

This bill would expressly require a group home, at the request of the probation department of the county in which the group home facility is located, to notify a probation official, as specified, of unusual incidents, including those that concern runaway incidents.

~~This bill would also hold a group home facility harmless for the inappropriate use of identifying information contained in a notification by prescribed parties.~~

This bill would also require the requesting probation department to maintain the confidentiality of any identifying information about the ward contained in the notification and prohibit the probation department from sharing, transferring, or otherwise releasing the identifying information to a third party unless otherwise authorized by state or federal law.

(4) Existing law requires a placement agency, as defined, to notify the appropriate licensing agency of any known or suspected incidents, as specified, that would jeopardize the health and safety of residents at a community care facility.

This bill would add sexual abuse and a situation in which the residents are inadequately supervised to the list of reportable incidents.

(5) Because the bill would impose additional duties on the counties, it would create 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, 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 1536.1 of the Health and Safety Code is
2 amended to read:
3 1536.1. (a) “Placement agency” means a county probation
4 department, county welfare department, county social service
5 department, county mental health department, county public
6 guardian, general acute care hospital discharge planner or
7 coordinator, conservator pursuant to Part 3 (commencing with
8 Section 1800) of Division 4 of the Probate Code, conservator
9 pursuant to Chapter 3 (commencing with Section 5350) of Part 1
10 of Division 5 of the Welfare and Institutions Code, and regional
11 center for persons with developmental disabilities, that is engaged
12 in finding homes or other places for placement of persons of any
13 age for temporary or permanent care.
14 (b) A placement agency shall place individuals only in licensed
15 community care facilities, facilities that are exempt from licensing
16 under Section 1505 or if the facility satisfies subdivision (c) of
17 Section 362 of the Welfare and Institutions Code, or with a foster
18 family agency.
19 (c) No employee of a placement agency shall place, refer, or
20 recommend placement of a person in a facility operating without
21 a license, unless the facility is exempt from licensing under Section
22 1505 or unless the facility satisfies subdivision (c) of Section 362
23 of the Welfare and Institutions Code. Violation of this subdivision
24 is a misdemeanor.
25 (d) Any employee of a placement agency who knows, or
26 reasonably suspects, that a facility that is not exempt from licensing
27 is operating without a license shall report the name and address of
28 the facility to the department. Failure to report as required by this
29 subdivision is a misdemeanor.
30 (e) The department shall investigate any report filed under
31 subdivision (d). If the department has probable cause to believe
32 that the facility that is the subject of the report is operating without
33 a license, the department shall investigate the facility within 10
34 days after receipt of the report.

(f) A placement agency shall notify the appropriate licensing agency of known or suspected incidents that would jeopardize the health or safety of residents in a community care facility. Reportable incidents include, but are not limited to, all of the following:

(1) Incidents of physical or sexual abuse.

(2) A violation of personal rights.

(3) A situation in which a facility is unclean, unsafe, unsanitary, or in poor condition.

(4) A situation in which a facility has insufficient personnel or incompetent personnel on duty.

(5) A situation in which residents experience mental or verbal abuse.

(6) A situation in which residents are inadequately supervised.

SEC. 2. Section 1538.5 of the Health and Safety Code is amended to read:

1538.5. (a) (1) Not less than 30 days prior to the anniversary of the effective date of a residential community care facility license, except licensed foster family homes, the department may transmit a copy to the board members of the licensed facility, parents, legal guardians, conservators, clients' rights advocates, or placement agencies, as designated in each resident's placement agreement, of all inspection reports given to the facility by the department during the past year as a result of a substantiated complaint regarding a violation of this chapter relating to resident abuse and neglect, food, sanitation, incidental medical care, and residential supervision. During that one-year period the copy of the notices transmitted and the proof of the transmittal shall be open for public inspection.

(2) The department may transmit copies of the inspection reports referred to in paragraph (1) concerning group homes, as defined by regulations of the department, to the county in which a group home facility is located, if requested by that county.

(3) A group home facility shall maintain, at the facility, a copy of all licensing reports for the past three years that would be accessible to the public through the department, for inspection by placement officials, current and prospective facility clients, and these clients' family members who visit the facility.

(b) The facility operator, at the expense of the facility, shall transmit a copy of all substantiated complaints, by certified mail,

1 to those persons described pursuant to paragraph (1) of subdivision
2 (a) in the following cases:

3 (1) In the case of a substantiated complaint relating to resident
4 physical or sexual abuse, the facility shall have three days from
5 the date the facility receives the licensing report from the
6 department to comply.

7 (2) In the case in which a facility has received three or more
8 substantiated complaints relating to the same violation during the
9 past 12 months, the facility shall have five days from the date the
10 facility receives the licensing report to comply.

11 (c) A residential facility shall retain a copy of the notices
12 transmitted pursuant to subdivision (b) and proof of their
13 transmittal by certified mail for a period of one year after their
14 transmittal.

15 (d) If a residential facility to which this section applies fails to
16 comply with this section, as determined by the department, the
17 department shall initiate civil penalty action against the facility in
18 accordance with this article and the related rules and regulations.

19 (e) Not less than 30 days prior to the anniversary of the effective
20 date of the license of any group home facility, as defined by
21 regulations of the department, at the request of the county in which
22 the group home facility is located, a group home facility shall
23 transmit to the county a copy of all incident reports prepared by
24 the group home facility and transmitted to a placement agency, as
25 described in subdivision (f) of Section 1536.1, in a county other
26 than the county in which the group home facility is located that
27 involved a response by local law enforcement or emergency
28 services personnel, including runaway incidents. The county shall
29 designate an official for the receipt of the incident reports and shall
30 notify the group home of the designation. Prior to transmitting
31 copies of incident reports to the county, the group home facility
32 shall redact the name of any child referenced in the incident reports,
33 and other identifying information regarding any child referenced
34 in the reports. The county may review the incident reports to ensure
35 that the group home facilities have taken appropriate action to
36 ensure the health and safety of the residents of the facility.

37 (f) The department shall notify the residential community care
38 facility of its obligation when it is required to comply with this
39 section.

1 SEC. 3. Section 1567.3 of the Health and Safety Code is
2 amended to read:

3 1567.3. (a) No licensed community care facility may receive
4 a ward of the juvenile court as described in Section 602 of the
5 Welfare and Institutions Code until the probation officer of the
6 county in which the community care facility is located has received
7 notice, in writing, by fax, or electronically transmitted, of the
8 placement, as prescribed in Section 740 of the Welfare and
9 Institutions Code, including the name of the ward, the juvenile
10 record of the ward, including any known prior offenses or gang
11 affiliation, and the ward's county of residence, from the probation
12 officer of the county making the placement, or, in the case of a
13 ward of the Department of Corrections and Rehabilitation, Division
14 of Juvenile Facilities, the parole officer in charge of the case. The
15 licensed community care facility shall maintain a copy of this
16 notice on file as evidence of compliance with this section.

17 (b) (1) The probation officer of a county making an
18 out-of-county placement of a ward of the juvenile court as
19 described in Section 602 of the Welfare and Institutions Code shall
20 notify the probation officer of the county in which the community
21 care facility is located at least 24 hours prior to receipt of the ward
22 by the licensed community care facility. If the ward is received on
23 a weekend or holiday, notification shall be made by the end of the
24 next business day.

25 (2) A probation officer of a county making an out-of-county
26 placement of a ward of the juvenile court who makes a notification
27 pursuant to paragraph (1) shall also send, at that time, a copy of
28 the notification to the community care facility where the ward is
29 being placed.

30 SEC. 4. Section 740 of the Welfare and Institutions Code is
31 amended to read:

32 740. (a) Any minor adjudged to be a ward of the court on the
33 basis that he or she is a person described in Section 602 and who
34 is placed in a community care facility shall be placed in a
35 community care facility within his or her county of residence,
36 unless both of the following apply:

37 (1) He or she has identifiable needs requiring specialized care
38 that cannot be provided in a local facility or his or her needs dictate
39 physical separation from his or her family.

1 (2) The county of residence agrees to pay the placement county
2 the costs of providing services to the minor, pursuant to Section
3 1566.25 of the Health and Safety Code.

4 (b) (1) Before the placement of a minor adjudged to be a ward
5 of the court on the basis that he or she is a person described in
6 Section 602 in any community care facility outside the ward's
7 county of residence, the probation officer of the county making
8 the placement, or in the case of a ward of the Department of
9 Corrections and Rehabilitation, Division of Juvenile Facilities, the
10 parole officer in charge of his or her case, shall send, via mail,
11 delivery, fax, or electronically, written notice of the placement,
12 including the name of the ward, the juvenile record of the ward
13 (including any known prior offenses), and the ward's county of
14 residence, to the probation officer of the county in which the
15 community care facility is located. It is the intention of the
16 Legislature, in regard to this requirement, that the probation officer
17 of the county making the placement, or in the case of a ward of
18 the Department of Corrections and Rehabilitation, Division of
19 Juvenile Facilities, the parole officer in charge of his or her case,
20 shall make his or her best efforts to send, via mail, fax, or
21 electronically, or to hand deliver, the notice at least 24 hours prior
22 to the time the placement is made. When that placement is
23 terminated, the probation officer of the county making the
24 placement, or in the case of a ward of the Department of
25 Corrections and Rehabilitation, Division of Juvenile Facilities, the
26 parole officer in charge of his or her case, shall send notice thereof
27 to any person or agency receiving notification of the placement.

28 (2) When it has been determined that it is necessary for a ward
29 whose board and care is funded through the Aid to Families with
30 Dependent Children-Foster Care program to be placed in a county
31 other than the ward's parents' or guardians' county of residence,
32 the specific reason the out-of-county placement is necessary shall
33 be documented in the ward's case plan. If the reason is lack of
34 resources in the sending county to meet the specific needs of the
35 ward, those specific resources needs shall be documented in the
36 case plan.

37 (3) When it has been determined that a ward whose board and
38 care is funded through the Aid to Families with Dependent
39 Children-Foster Care program is to be placed out-of-county and
40 that the sending county is to maintain responsibility for supervision

1 and visitation of the ward, the sending county shall develop a plan
2 of supervision and visitation activities to be performed, and shall
3 specify that the sending county is responsible for performing those
4 activities. In addition to the plan of supervision and visitation, the
5 sending county shall document information regarding known or
6 suspected gang affiliation or dangerous behavior of the ward that
7 indicates the ward may pose a safety concern in the receiving
8 county. The sending county shall send to the receiving county a
9 copy of the plan of supervision and visitation, in addition to the
10 notice of placement required in paragraph (1), prior to placement
11 of the ward. If placement occurs on a holiday or weekend, the plan
12 of supervision and visitation and the notice of placement shall be
13 provided to the receiving county on or before the end of the next
14 business day.

15 (4) When it has been determined that a ward whose placement
16 is funded through the Aid to Families with Dependent
17 Children-Foster Care program is to be placed out-of-county and
18 the sending county plans that the receiving county shall be
19 responsible for the supervision and visitation of the ward, the
20 sending county shall develop a formal agreement between the
21 sending and receiving counties. The formal agreement shall specify
22 the supervision and visitation to be provided the ward, and shall
23 specify that the receiving county is responsible for providing the
24 supervision and visitation. The formal agreement shall be approved
25 and signed by the sending and receiving counties prior to placement
26 of the ward in the receiving county. Additionally, the notice of
27 placement required by paragraph (1) shall be provided to the
28 receiving county prior to placement of the ward in that county.
29 Upon completion of the case plan, the sending county shall provide
30 a copy of the completed case plan to the receiving county. The
31 case plan shall include information regarding known or suspected
32 gang affiliation or dangerous behavior of the ward that indicates
33 the ward may pose a safety concern for the receiving county.

34 (5) The probation department of a receiving county that has a
35 group home in which a minor is placed by the probation department
36 of another county, after adjudication of the minor for any felony
37 offense, shall disclose to the sheriff of the receiving county or to
38 the municipal police department of the city in which the group
39 home is located, the name of the minor, the felony offense or
40 offenses for which the minor has been adjudicated, and the address

1 of the group home. This information shall be utilized only for law
2 enforcement purposes and may not be utilized in a manner that is
3 inconsistent with the rehabilitative program in which the minor
4 has been placed or with the progress the minor may be making in
5 the placement program. Notwithstanding any other law, the
6 information provided by the probation department to a law
7 enforcement agency under this paragraph may be provided to other
8 law enforcement personnel for the limited law enforcement
9 purposes described in this paragraph, but shall otherwise remain
10 confidential.

11 (c) Notwithstanding subdivision (e) of Section 1538.5 of the
12 Health and Safety Code, at the request of the probation department
13 of the county in which the group home facility is located, the group
14 home shall notify a probation official designated by the probation
15 department to receive notifications pursuant to this subdivision,
16 of unusual incidents concerning a ward placed by the sending
17 county that involved a response by local law enforcement or
18 emergency services personnel, including runaway incidents. The
19 notification shall include identifying information about the ward.
20 A group home facility shall notify the designated probation official
21 of a requesting probation department of an unusual incident no
22 later than the applicable deadline imposed by law or department
23 regulation for a group home facility to notify the licensing agency
24 of the unusual incident. ~~The group home facility shall be held~~
25 ~~harmless for inappropriate use of identifying information about~~
26 ~~the ward that is contained in the notification by the requesting~~
27 ~~probation department, or any other party to whom the requesting~~
28 ~~probation department makes the notification available. The~~
29 ~~requesting probation department shall maintain the confidentiality~~
30 ~~of any identifying information about the ward contained in the~~
31 ~~notification and shall not share, transfer, or otherwise release the~~
32 ~~identifying information to a third party unless otherwise authorized~~
33 ~~by state or federal law.~~

34 (d) A minor, the parent or guardian of a minor, and counsel
35 representing a minor or the parent or guardian of a minor may
36 petition the juvenile court for the review of a placement decision
37 concerning the minor made by the probation officer pursuant to
38 subdivision (a). The petition shall state the petitioner's relationship
39 to the minor and shall set forth in concise language the grounds
40 on which the review is sought. The court shall order that a hearing

1 shall be held on the petition and shall give prior notice, or cause
2 prior notice to be given, to the persons and by the means prescribed
3 by Section 776, and, in instances in which the means of giving
4 notice is not prescribed by that section, then by any means as the
5 court prescribes.

6 (e) If a minor is placed in a community care facility out of his
7 or her county of residence and is then arrested and placed in
8 juvenile hall pending a jurisdictional hearing, the county of
9 residence shall pay to the probation department of the county of
10 placement all reasonable costs resulting directly from the minor's
11 stay in the juvenile hall, provided that these costs exceed one
12 hundred dollars (\$100).

13 (f) If, as a result of the hearing in subdivision (d), the minor is
14 remanded back to his or her county of residence, the county of
15 residence shall pay to the probation department of the county of
16 placement, in addition to any payment made pursuant to
17 subdivision (e), all reasonable costs resulting directly from
18 transporting the minor to the county of residency, provided that
19 these costs exceed one hundred dollars (\$100).

20 (g) Claims made by the probation department in the county of
21 placement to the county of residence, pursuant to subdivisions (e)
22 and (f), shall be paid within 30 days of the submission of these
23 claims and the probation department in the county of placement
24 shall bear the remaining expense.

25 (h) As used in this section:

26 (1) "Community care facility" shall be defined as provided in
27 Section 1502 of the Health and Safety Code.

28 (2) "Gang affiliation" shall have the same meaning as defined
29 for data entry into the CalGang system.

30 (3) "Group home" has the same meaning as provided in
31 paragraph (1) of subdivision (g) of Section 80001 of Title 22 of
32 the California Code of Regulations.

33 SEC. 5. If the Commission on State Mandates determines that
34 this act contains costs mandated by the state, reimbursement to
35 local agencies and school districts for those costs shall be made
36 pursuant to Part 7 (commencing with Section 17500) of Division
37 4 of Title 2 of the Government Code.