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# Chapter 60: Long-Term Care or a Band-Aid for California's Emergency Medical and Pediatric Trauma Care Crisis?

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# Chapter 60: Long-Term Care or a Band-Aid for California's Emergency Medical and Pediatric Trauma Care Crisis?

*Evelyn Grosenick*

## *Code Sections Affected*

Government Code § 76000.5 (amended); Health and Safety Code § 1797.98a (amended).

SB 1236 (Padilla); 2008 STAT. Ch. 60.

## I. INTRODUCTION

At noon on a spring day in 1987, a suicidal driver going ninety-seven miles per hour on a major throughway in the San Fernando Valley collided with a car carrying Richie Alarcón, a three-year old boy.<sup>1</sup> Richie was still alive when paramedics arrived, but they had to transport him by helicopter to Children's Hospital Los Angeles because there was no pediatric trauma center nearby.<sup>2</sup> Due to the delay in transporting Richie to a hospital in another city that was specially equipped to handle pediatric trauma, over an hour passed between the time of the accident and the administration of critical emergency care.<sup>3</sup> While there was no guarantee that Richie would have lived had he received treatment sooner, his chances of survival would have drastically increased if he had received treatment during the "Golden Hour."<sup>4</sup> The next day, Richie died in his family's arms.<sup>5</sup>

Unfortunately, Richie's experience is not unique. Trauma is the number one cause of death among children each year and there is a shortage of emergency departments equipped to handle the unique needs of young trauma patients.<sup>6</sup> The crisis in general emergency medical care exacerbates the crisis in pediatric trauma care.<sup>7</sup> Emergency room visits are on the rise,<sup>8</sup> and hospitals are forced to

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1. Dennis McCarthy, *Tragedy Spurs Effort to Save Others: 21 Years After Death of His Son, Councilman Seeks Pediatric Trauma Center in Valley*, DAILY NEWS OF L.A., May 1, 2008, at A1.

2. *Id.*

3. *Id.*

4. *Id.* Victims who receive critical emergency care within sixty minutes of the infliction of trauma are more likely to survive (this is referred to as "the Golden Hour"). *Id.*

5. *Id.*

6. Robert W. Letton, Jr. & David W. Tuggle, *The Crisis in Pediatric Trauma*, EMERGENCY MED. & CRITICAL CARE REV. 34 (2007).

7. *Emergency Care Crisis: A Nation Unprepared for Public Health Disasters, Hearing Before the Homeland Security Subcomm. on Emergency Preparedness, Sci., & Tech.*, 109th Cong. 1 (2006) (statement of Steven Krug, Rep., American Academy of Pediatrics) [hereinafter Krug Statement] (on file with the *McGeorge Law Review*).

8. *See The Government's Response to the Nation's Emergency Room Crisis, Hearing Before the H. Comm. on Oversight and Government Reform*, 110th Cong. 3 (2007) (statement of Ramon W. Johnson, Rep., American College of Emergency Physicians) [hereinafter Johnson Statement] (on file with the *McGeorge Law Review*) (stating that

absorb the costs of treating uninsured and underinsured patients.<sup>9</sup> As a result, many hospitals have closed their emergency departments.<sup>10</sup>

In 1987, the California Legislature responded to the general emergency medical care crisis by enacting legislation that allowed counties to set up special funds to supplement funding for emergency medical services.<sup>11</sup> In 2006, the Legislature amended existing law to allow counties to increase the revenues for these special funds and to set up new funds specifically for pediatric trauma care.<sup>12</sup> However, the 2006 amendment included a sunset date of January 1, 2009.<sup>13</sup> Chapter 60 extends the sunset date until January 1, 2014, so counties may continue to supplement funding for emergency departments and pediatric trauma centers for an additional five years.<sup>14</sup>

## II. BACKGROUND

### A. *The Funding Crisis in Emergency Medical Care*

A crisis is “an unstable or crucial time or state of affairs in which a decisive change is impending; [especially] one with the distinct possibility of a highly undesirable outcome.”<sup>15</sup> The closure of over sixty-five emergency departments in California over the last decade is evidence of the unstable state of emergency medical care.<sup>16</sup> Lack of funding is primarily to blame for these closures.<sup>17</sup> Federal

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emergency room visits have increased by twenty percent between 1995 and 2005).

9. Nadra Kareem, *How Wide is Health Care Gap Despite Change?*, 12 SAN FERN. V. BUS. J., Nov. 26, 2007, at S8.

10. SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF SB 1773, at 4 (Apr. 24, 2006); *see also Hospitals in Crisis*, LAS VEGAS REV. J., Sept. 25, 2007, at 8B (“[M]ore than 50 community hospitals have closed in Southern California over the past 10 years. Fourteen other emergency rooms and trauma centers have closed in the region over the past five years.”).

11. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1773, at 5 (Aug. 29, 2006); 1987 Cal. Stat. ch. 1240, § 14.

12. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1773, at 3-4 (Aug. 29, 2006); CAL. GOV'T CODE § 76000.5 (West Supp. 2009); CAL. HEALTH & SAFETY CODE § 1797.98a(e)-(f) (West 2007).

13. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1236, at 1-2 (Apr. 15, 2008).

14. *Id.* at 2.

15. MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 275 (10th ed. 1993).

16. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at G (Mar. 25, 2008); SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF SB 1773, at 4 (Apr. 24, 2006); *see also Hospitals in Crisis*, *supra* note 10 (“[M]ore than 50 community hospitals have closed in Southern California over the past 10 years. Fourteen other emergency rooms and trauma centers have closed in the region over the past five years.”).

17. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1773, at 8 (Aug. 29, 2006); *see also* HENRY A. WAXMAN, U.S. HOUSE OF REPRESENTATIVES, BACKGROUND: RESPONSE OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO THE NATION'S EMERGENCY CARE CRISIS 2 (2007), *available at* <http://oversight.house.gov/documents/20070810151337.doc> (on file with the *McGeorge Law Review*) (stating that if all patients had the ability to pay for services, the emergency medical care system would probably not be in a state of crisis). Lack of payment is not the only reason that emergency departments close, federal law has reduced the availability of on-call specialists to emergency departments, reduced incentives for hospitals to maintain emergency departments, and increased incentives for hospitals to allow overcrowding. *Id.* at 2-3.

law requires hospitals with emergency departments to treat anyone who requires emergency care regardless of the patient's ability to pay.<sup>18</sup> Because hospitals cover ninety-five percent of the cost of treating uninsured patients and one-third of emergency room patients in California are uninsured,<sup>19</sup> hospitals lose more than \$635 million per year as a result of treating uninsured and underinsured patients.<sup>20</sup>

California's statewide budget problems also contribute to the emergency care crisis.<sup>21</sup> It is estimated that California hospitals will lose close to \$500 million as a result of state budget cuts.<sup>22</sup> Thus, in addition to suffering large financial losses as a result of providing emergency treatment, hospitals also stand to lose supplemental government funding on which they rely.<sup>23</sup> The crisis in emergency medical care worsens as emergency visits increase, government funding decreases, and emergency departments close.<sup>24</sup>

### B. Children's Unique Medical Needs

The overall lack of funding for emergency medical care significantly impacts children, who account for twenty-seven percent of visits to emergency departments.<sup>25</sup> In addition to the lack of funding for general emergency medical care, the unique needs of pediatric trauma patients also contribute to the crisis in pediatric trauma care.<sup>26</sup> Due to children's small size and particular physiologies, children who suffer traumatic injuries require special equipment and specially-trained nurses and physicians.<sup>27</sup> Children require smaller equipment than adults,

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18. Johnson Statement, *supra* note 8, at 5. In 1986, Congress enacted the Emergency Medical Treatment and Labor Act (EMTALA) in response to reports that hospitals were refusing to treat uninsured patients who needed emergency care. *Id.* Under EMTALA, hospitals are required to treat patients to the point of stabilization. WAXMAN, *supra* note 17, at 3.

19. Kareem, *supra* note 9.

20. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at G (Mar. 25, 2008). Most hospitals also lose money treating emergency patients who are enrolled in Medicaid or Medicare. Johnson Statement, *supra* note 8, at 6 ("73 percent of hospitals lose money providing emergency care to Medicaid patients while 58 percent lose money for care provided to Medicare patients."). A report published by the Institute of Medicine (IOM) reported that in 2000 the average emergency physician incurred \$138,000 in bad debt annually as a result of treating uninsured and underinsured emergency patients. *Id.*

21. See SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at L (Mar. 25, 2008) (stating that California is contemplating cuts to health care funding in response to the current budget crisis).

22. *Id.* at G.

23. *Id.*; see also WAXMAN, *supra* note 17, at 6 (stating that the Centers for Medicare and Medicaid Services (CMS) intend to reduce supplemental funding for certain hospitals that provide critical emergency care in their areas).

24. See Johnson Statement, *supra* note 8, at 3 ("[B]etween 1995 and 2005[,] hospital emergency department visits [across the nation] increased by 20 percent while the number of emergency departments decreased by 38 percent . . .").

25. Letton & Tuggle, *supra* note 6, at 34.

26. *Id.* at 34-35.

27. *Id.*

including needles, oxygen masks, and imaging equipment.<sup>28</sup> Because children are smaller and have faster metabolisms than adults, they require more carefully-calculated dosages of medications.<sup>29</sup>

Emergency responders must treat pediatric traumas more quickly than most adult traumas because children have smaller circulatory systems.<sup>30</sup> As a result, children are more likely to die from relatively low quantities of blood loss and are more responsive to increases and decreases in body temperature.<sup>31</sup> Children are also less likely to be able to communicate their symptoms to health care providers.<sup>32</sup> Thus, children who suffer trauma require specially-trained nurses and doctors who can recognize symptoms early and respond quickly to children's unique medical needs.<sup>33</sup>

However, a recent report found that only six percent of the nation's emergency departments have the equipment and specially-trained personnel necessary to handle the unique needs of child patients.<sup>34</sup> In addition, "fewer than half had even 85% of the supplies [child patients need]."<sup>35</sup> Because most children receive treatment in general emergency departments, the trend in general emergency room closures threatens to deny even more children necessary emergency care.<sup>36</sup>

### C. California's Response: (Maddy) Emergency Medical Services Funds

In 1987, the California Legislature responded to the emergency medical care crisis by adding sections 1797.98a through 1797.98e to the Health and Safety Code.<sup>37</sup> The Legislature concluded that the treatment of a high number of non-paying patients caused the crisis in emergency medical services and threatened to shut down many emergency departments.<sup>38</sup> The Legislature also concluded that emergency services cost more than other types of medical care and that emergency medical care providers have lower collection rates for the costs of their services than providers of other medical services.<sup>39</sup>

Section 1797.98a allows a county's board of supervisors to set up and maintain an Emergency Medical Services (EMS) Fund to supplement funding for

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28. Krug Statement, *supra* note 7, at 2.

29. *Id.* at 2-3.

30. *Id.* at 3.

31. *Id.*

32. *Id.* at 2.

33. *Id.* at 3.

34. Letton & Tuggle, *supra* note 6, at 34.

35. *Id.*

36. *Id.*

37. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1773, at 5 (Aug. 29, 2006); CAL. HEALTH & SAFETY CODE §§ 1797.98a-1797.98e (West 2007) (enacted by 1987 Cal. Stat. ch. 1240, § 14).

38. 1987 Cal. Stat. ch. 1240, § 1.

39. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1773, at 5 (Aug. 29, 2006).

emergency medical care.<sup>40</sup> These EMS Funds receive revenues from numerous sources, including additional penalties assessed on violations of the Penal and Vehicle codes, additional fees charged to people attending traffic school, and a portion of taxes collected from the sale of tobacco products.<sup>41</sup> Section 1797.98a does not require counties to set up and maintain EMS Funds, but if a county chooses to supplement emergency-care funding in this way, it must distribute the funds according to a specific allocation schedule.<sup>42</sup> In 1998, the Legislature renamed the funds “Maddy Emergency Medical Services (EMS) Funds” after State Senator Ken Maddy, the author of the original law.<sup>43</sup>

*D. The 2006 Amendment: Additional Penalties and Richie’s Fund*

Due to the success of Maddy EMS Funds<sup>44</sup> and motivated by his own experience with the lack of access to pediatric trauma care, State Senator Richard Alarcón sponsored an amendment to the Health and Safety Code in 2006.<sup>45</sup> The 2006 amendment generates additional revenues for Maddy EMS Funds and reallocates a portion of Maddy EMS Funds for pediatric trauma care.<sup>46</sup>

First, the 2006 amendment added section 76000.5 to the Government Code.<sup>47</sup> This section allows counties to add a twenty percent penalty to the assessment of fines for all Criminal and Vehicle code violations and for specified Business and Professions code violations relating to the sale and distribution of alcoholic beverages.<sup>48</sup> Prior to the addition of section 76000.5 of the Government Code,

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40. *Id.*; CAL. HEALTH & SAFETY CODE § 1797.98a(a)-(b)(1) (West 2007).

41. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1773, at 5 (Aug. 29, 2006).

42. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1236, at 2 (Apr. 15, 2008); CAL. HEALTH & SAFETY CODE § 1797.98a(b)(2), (4), (5). Sections 1797.98a(b)(2) and (b)(4) allocate up to ten percent of the Fund for administration of the Fund and up to fifteen percent of the Fund for a reserve, respectfully. *Id.* § 1797.98a(b)(2), (4). After as much as ten percent is taken out for administration, the remaining Funds are allocated in the following way: fifty-eight percent is required to be distributed to physicians and surgeons whose patients do not pay for emergency medical care, twenty-five percent must be allocated to hospitals that provide a disproportionate volume of emergency and trauma care, and seventeen percent must be distributed to other sources of emergency medical care chosen by the county. *Id.* § 1797.98a(b)(5).

43. 1998 Cal. Stat. ch. 58, § 1(a).

44. *Id.* § 1(b).

45. McCarthy, *supra* note 1.

46. *See* SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF SB 1773, at 4 (Apr. 24, 2006) (providing statistics on the emergency health care crisis in California and stating that “this bill seeks to generate funding to help alleviate this problem”).

47. 2006 Cal. Stat. ch. 841, § 1.

48. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at K (Mar. 25, 2008); CAL. GOV’T CODE § 76000.5(a)(1) (West Supp. 2009). Key language provides:

[T]he county board of supervisors may elect to levy an additional penalty in the amount of two dollars (\$2) for every ten dollars (\$10), or part of ten dollars (\$10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including violations of . . . the Business and Professions Code relating to the control of alcoholic beverages, and all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code.

counties were adding up to 270 percent in penalties to fines and fees assessed for violations of the Penal and Vehicle codes.<sup>49</sup> The revenues from these pre-existing penalty assessments go to specific state and county funds.<sup>50</sup>

Section 76000.5 does not require counties to assess the additional twenty percent penalty,<sup>51</sup> but it does require any county that elects to assess this penalty to deposit the revenues into a Maddy EMS Fund.<sup>52</sup> In addition, counties cannot assess the additional twenty percent penalty if it would decrease revenues for pre-existing county funds that rely on funding from penalty assessments.<sup>53</sup> Thus, Government Code section 76000.5 provides an additional source of revenue for Maddy EMS Funds.<sup>54</sup>

Second, the 2006 amendment reallocates a portion of Maddy EMS Funds to pediatric trauma care.<sup>55</sup> The 2006 amendment added subsections (e) and (f) to Health and Safety code section 1797.98a.<sup>56</sup> Subsection (e) designates fifteen percent of Maddy EMS Funds exclusively for pediatric trauma care (known as "Richie's Fund").<sup>57</sup> Richie's Fund only receives revenues from Maddy EMS Funds in those counties that assess the additional twenty percent penalties.<sup>58</sup>

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*Id.* The penalty does not apply to fines and fees related to parking violations. *Id.* § 76000.5(a)(2)(C).

49. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at G-H (Mar. 25, 2008); CAL. GOV'T CODE § 76000 (West 2005 & Supp. 2009). Section 76000.5 of the Government Code also increased the amount of the total penalty assessed on each Penal or Vehicle code violation to as much as 290 percent. *See* SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at G-L (Mar. 25, 2008) (explaining that the twenty percent penalty assessment authorized by section 76000.5 is in addition to the pre-existing two hundred and seventy percent penalty).

50. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at H (Mar. 25, 2008). Up to twenty-eight percent of the 270 percent in penalty revenues is deposited into the Maddy EMS Fund of any county that maintains one. CAL. GOV'T CODE § 76104(a)-(c) (West 2005). Some of the revenues collected from the 270 percent penalties assessed on fines and forfeitures for violations of the criminal and vehicle codes benefit the following state funds: the Fish and Game Preservation Fund, the Restitution Fund, the Peace Officers Training Fund, the Driver Training Fund, the Corrections Training Fund, the Local Public Prosecutors and Public Defenders Fund, the Victim-Witness Assistance Fund, and the Traumatic Brain Injury Fund. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at H (Mar. 25, 2008). Some revenues may be used for any of the following funds that counties have elected to maintain: "Courthouse Construction Fund; a Criminal Justice Facilities Construction Fund; Automated Fingerprint Identification Fund; Emergency Medical Services Fund; DNA Identification Fund." *Id.* The rest of the revenues go into the state and county general funds and funds for courthouse security, courthouse construction, and DNA databank implementation. *Id.*

51. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1236, at 2 (Apr. 15, 2008).

52. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1773, at 4-5 (Aug. 29, 2006); CAL. HEALTH & SAFETY CODE § 1797.98a (West 2007).

53. CAL. GOV'T CODE § 76000.5(b) (West Supp. 2009).

54. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at K (Mar. 25, 2008); CAL. GOV'T CODE § 76000.5(a).

55. CAL. HEALTH & SAFETY CODE § 1797.98a(e)-(f).

56. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1773, at 4 (Aug. 29, 2006); CAL. HEALTH & SAFETY CODE § 1797.98a(e)-(f).

57. CAL. HEALTH & SAFETY CODE § 1797.98a(e).

58. Subsection 1797.98a(e) provides that Richie's Fund receive fifteen percent of the money deposited into the Maddy EMS Fund according to section 76000.5 of the Government Code, and section 76000.5 of the Government Code allows counties to assess the additional twenty percent penalty and place the revenues in a

Subsection 1797.98a(f) designates up to ten percent of the remainder of the Maddy EMS Funds for administration of the Funds.<sup>59</sup> The addition of subsections (e) and (f) to Health and Safety code section 1797.98a only slightly changed the allocation of Maddy EMS Funds in counties that elect to charge the additional twenty-percent penalty.<sup>60</sup>

Pediatric health care providers that qualify for reimbursement from Richie's Fund include pediatric trauma centers, hospitals that provide emergency care to pediatric patients for which they are not reimbursed, and hospitals that are in the process of improving pediatric trauma services.<sup>61</sup> Counties that do not have any pediatric trauma centers must use the money from Richie's Fund to improve access to pediatric trauma care.<sup>62</sup>

The 2006 amendment to existing law gives counties the opportunity to generate additional revenue to supplement general emergency medical care funding, but the amendment also requires those counties to use fifteen percent of their Maddy EMS Funds to improve access to pediatric trauma care.<sup>63</sup> Additionally, Government Code section 76000.5 and Health and Safety Code section 1797.98a(e) and (f) had a sunset date of January 1, 2009 and would have expired had the Legislature not enacted Chapter 60.<sup>64</sup>

### III. CHAPTER 60

Chapter 60 extends the sunset date for the above-referenced sections to January 1, 2014.<sup>65</sup> County boards of supervisors now have an additional five years to elect to supplement funding for emergency medical and pediatric trauma care by assessing an additional penalty of two dollars for every ten dollars

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Maddy EMS Fund. Thus, only counties that assess the additional twenty percent penalty under Section 76000.5 of the Government code designate fifteen percent of the Maddy EMS Fund for Richie's Fund. CAL. HEALTH & SAFETY CODE § 1797.98a(e); CAL. GOV'T CODE § 76000.5.

59. CAL. HEALTH & SAFETY CODE § 1797.98a(f).

60. E-mail from Marivel Gomez, Leg. Aide/Senate Fellow, Office of Senator Alex Padilla, to author (June 5, 2008, 16:46:00 PST) [hereinafter Gomez E-mail] (on file with the *McGeorge Law Review*). After fifteen percent is taken out of the Maddy EMS Fund for Richie's Fund, up to ten percent of the remaining eighty-five percent is available for administration. *Id.* The remaining seventy-six and a half percent is allocated according to the pre-existing allocation schedule. *Id.* Thus, fifty-eight percent of the remaining seventy-six and a half percent of the Funds must be distributed to physicians that provide a disproportionate volume of emergency care for which they are not reimbursed; twenty-five percent of the remaining seventy-six and a half percent of the remaining Funds must go to hospitals that provide a disproportionate volume of emergency and trauma care; seventeen percent of the remaining seventy six and a half percent of the Funds must be distributed to other sources of emergency medical care chosen by the county. CAL. HEALTH & SAFETY CODE § 1797.98a(b)(5); Gomez E-mail, *supra*.

61. CAL. HEALTH & SAFETY CODE § 1797.98a(e).

62. *Id.*

63. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at C (Mar. 25, 2008).

64. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1236, at 1-2 (Apr. 15, 2008); CAL. GOV'T CODE § 76000.5(e); CAL. HEALTH & SAFETY CODE § 1797.98a(e)-(f).

65. CAL. GOV'T CODE § 76000.5 (amended by Chapter 60); CAL. HEALTH & SAFETY CODE § 1797.98a (amended by Chapter 60); SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1236, at 2 (Apr. 15, 2008).

collected for specified Penal, Vehicle, and Business and Professions codes violations.<sup>66</sup>

#### IV. ANALYSIS

As of November 2003, forty-nine of California's fifty-eight counties were using Maddy EMS Funds to supplement emergency medical-care funding.<sup>67</sup> Fourteen counties currently maintain Richie's Funds and assess the additional twenty-percent penalty on violations of the Penal, Vehicle, and Business and Professions codes authorized by the 2006 amendment.<sup>68</sup> There is little data on penalty-assessment collection in general,<sup>69</sup> and counties have only operated Richie's Funds and assessed the additional penalty under the 2006 amendment for two years.<sup>70</sup> As a result, most of the available information regarding the collection of assessed penalties and the success of Maddy EMS Funds and Richie's Funds is general in nature.<sup>71</sup>

##### A. Support for Chapter 60

The 2006 amendment and Chapter 60 garnered widespread support both inside and outside the Legislature.<sup>72</sup> Within the Legislature, the six co-authors of Chapter 60 represented both the Senate and the Assembly.<sup>73</sup> Chapter 60's proponents focus on the need to generate additional funding for emergency medical and pediatric trauma care and on the positive impacts that Maddy EMS Funds and Richie's Funds have on emergency medical and pediatric trauma care funding.<sup>74</sup>

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66. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1236, at 1-2 (Apr. 15, 2008).

67. SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF SB 1773, at 5 (Apr. 24, 2006).

68. Gomez E-mail, *supra* note 60. The counties whose boards of directors have elected to assess the additional twenty percent penalty and set up Richie's Funds include "San Bernardino, San Francisco, Merced, Stanislaus, El Dorado, Los Angeles, and Marin." *Id.*

69. See MARCUS NIETO, CAL. RESEARCH BUREAU, WHO PAYS FOR PENALTY ASSESSMENT PROGRAMS IN CALIFORNIA? 15-18 (2006), available at <http://www.library.ca.gov/crb/06/03/06-003.pdf> (on file with the *McGeorge Law Review*) (discussing reasons for the lack of data on the collection of penalty assessments).

70. See CAL. GOV'T CODE § 76000.5(b) (West Supp. 2009) (stating that section 76000.5 was added by the Statutes of 2006).

71. NIETO, *supra* note 69, at 15, 19. For a detailed explanation of the different methods counties use to keep track of penalty assessment collection and distribution to various funds, see *id.* at 1-2, 15-20 (explaining that there is no state-wide collection of such information and describing the difficulties that counties encounter in trying to collect and compile this information).

72. See, e.g., ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at 6-7 (June 10, 2008) (providing statements in support from seven proponents of Chapter 60); SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1773, at 7 (Aug. 29, 2006) (listing twelve registered supporters of Chapter 841).

73. SB 1236, 2008 Leg. 2007-2008 Sess. (Cal. 2008) (as amended on Apr. 3, 2008) (noting that SB 1236 was introduced by Senator Padilla and listing the coauthors as Assembly Members Davis, Jones, and Ma and Senators Cedillo and Romero, thus the bill had support in both houses from early on).

74. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at 6-7 (June

According to the Legislature, Maddy EMS Funds have been a successful mechanism for generating additional funds for emergency medical care reimbursement since the first Funds were created in 1987.<sup>75</sup> The City and County of San Francisco reported that revenues generated by the additional penalty “are a key source of funds” for emergency medical services in the San Francisco area.<sup>76</sup> The Regional Council of Rural Counties views the revenue from penalty assessments as “a vital source” for rural emergency departments because of the challenges that rural emergency departments face.<sup>77</sup> The California State Association of Counties claims that the additional penalty assessments are “critical to keeping California’s ailing emergency and trauma care system afloat. The availability of pediatric trauma care services is also of paramount importance.”<sup>78</sup>

Los Angeles County, which implemented the additional penalty in March 2007, reported that the penalty assessment generated \$8.4 million in revenues as of January 2008.<sup>79</sup> Los Angeles County expects the additional penalty, the collection of which Chapter 60 allows to continue, to generate eighteen million dollars annually once its program reaches full maturity.<sup>80</sup> Additionally, Richie’s Fund has already increased access to pediatric trauma care in Los Angeles County.<sup>81</sup> The Los Angeles County Board of Supervisors has set aside two million dollars from Richie’s Fund to implement a pediatric trauma care unit at Northridge Hospital in the San Fernando Valley.<sup>82</sup>

Thus, although there is an overall lack of statistical data regarding the collection of the additional penalty and the success of Richie’s Funds, local governments claim that the 2006 amendment, which Chapter 60 extends for an additional five years, is having a positive impact on emergency medical and pediatric trauma care funding.<sup>83</sup>

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10, 2008) (providing statements in support of Chapter 60 from the City and County of San Francisco, The League of California Cities, the California State Association of Counties, the Regional Council of Rural Counties, the County of Los Angeles, the California Chapter of the American College of Emergency Physicians, and the City of El Paso de Robles).

75. 1998 Cal. Stat. ch. 58, § 1. Increases to penalties in 1988 and refinement of administration of the Funds were also successful in increasing revenues. *Id.*

76. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at 6 (June 10, 2008).

77. *Id.* at 7. These challenges include geographic obstacles, inconsistent use, lack of necessary equipment, and the long distances that rural patients must travel. *Id.*

78. *Id.*

79. Letter from William T. Fujioka, Chief Executive Officer, County of L.A., to the Board of Supervisors, County of L.A. (Apr. 3, 2008) [hereinafter Fujioka Letter] (on file with the *McGeorge Law Review*).

80. *Id.*

81. Press Release, Richard Alarcón, Alarcón Joins With County, State and Northridge Hospital Representatives to Announce Effort to Bring Pediatric Trauma Care to the Valley (Apr. 20, 2008), available at [http://www.lacity.org/council/cd7/pressreleases/cd7pressreleases275852544\\_04302008.pdf](http://www.lacity.org/council/cd7/pressreleases/cd7pressreleases275852544_04302008.pdf) (on file with the *McGeorge Law Review*).

82. *Id.*

83. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at 6-7 (June 10,

B. Criticism of Chapter 60

There was no registered opposition to Chapter 60.<sup>84</sup> However, there was opposition to the 2006 amendment and prior similar legislation introduced by Senator Alarcón.<sup>85</sup> In 2005, Governor Arnold Schwarzenegger vetoed legislation similar to the 2006 amendment on the grounds that even though the Legislature had been increasing the amount of penalty assessments on base fines, total revenues from these assessments were not increasing at the same rate.<sup>86</sup> Because numerous state and county agencies received revenues from penalty assessments, the Governor was concerned that further increasing the total penalty amount assessed on criminal and traffic violations could deprive other programs of necessary funding as total penalty revenues decreased.<sup>87</sup>

A 2006 report by the California Research Bureau provided several explanations for the possibility of diminishing returns on revenues from penalty assessments.<sup>88</sup> One possibility is that criminal offenders may choose jail time over paying fines.<sup>89</sup> Additionally, judges might reduce base fines in response to increasing penalties added to fines and fees.<sup>90</sup> Either of these occurrences could reduce total revenues generated through penalty assessments by reducing the total base fines collected.<sup>91</sup> Notably, the 2006 amendment included a provision that barred counties from assessing an additional twenty-percent penalty if doing so would decrease funds for pre-existing programs.<sup>92</sup>

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2008).

84. Gomez E-mail, *supra* note 60.

85. SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF SB 1773, at 6-7 (Apr. 24, 2006) (quoting the Governor's veto message regarding SB 57 of 2005).

86. *Id.* at 5-6; *see also* NIETO, *supra* note 69, at 19 (stating that a central inquiry in a survey of California counties was whether "there is a diminishing return on penalty revenues as a result of accumulative increases in the rate of assessed penalties").

87. *See* SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF SB 1773, at 6 (Apr. 24, 2006) (quoting the Governor's veto message regarding SB 57 of 2005).

88. NIETO, *supra* note 69, at 1. The California Research Bureau "provides nonpartisan research services to the Governor and his staff, to both houses of the legislature, and to other state elected officials." The California State Library, California Research Bureau Reports, <http://www.library.ca.gov/crb/CRBSearch.aspx> (last visited Oct. 18, 2008) (on file with the *McGeorge Law Review*).

89. NIETO, *supra* note 69, at 2. In a survey of California's fifty-eight counties, the only two counties that provided information on the rate at which offenders chose jail time over paying fines reported that roughly ten percent of offenders chose jail time over paying fines. *Id.*

90. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1773, at 6 (Aug. 29, 2006) (quoting the Assembly Appropriations Committee). *But see* NIETO, *supra* note 69, at 26 ("Due to jail overcrowding, in most counties judges do not have the option of putting an offender who chooses not pay fines and penalties into jail. Instead, judges usually require community service.").

91. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1773, at 6 (Aug. 29, 2006) (summarizing concerns of the Assembly Appropriations Committee). The report by the California Research Bureau notes that it is difficult to determine the exact cause of declining revenues from penalty assessments. NIETO, *supra* note 69, at 2. While "[h]igh penalty assessments may result in higher rates of default by the guilty parties," lower revenues might also be attributable to the inability of counties to collect assessed fines or overall decreases in crime rates. *Id.* at 25.

92. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1773, at 4 (Aug. 29, 2006); CAL. GOV'T CODE §

Additional opposition to the 2006 amendment came from groups representing professional drivers and agencies with pre-existing financial stakes in the collection of penalties assessed on base fines.<sup>93</sup> The California Teamsters Public Affairs Council and the California Labor Federation claimed that the increasing penalty assessments on traffic violations unfairly targeted professional drivers and did not go far enough in solving the emergency medical care crisis.<sup>94</sup> However, when the Legislature first created Emergency Medical Services Funds in 1987, it noted that penalties should be assessed for criminal and traffic violations, because the same activities that resulted in these violations often contribute to the need for emergency medical care.<sup>95</sup> The Commission on Peace Officer Standards and Training expressed concern that increasing penalties could decrease the revenues they receive from the State Penalty Fund, which is funded by penalty assessments.<sup>96</sup> Thus, opposition to the 2006 amendment, which Chapter 60 extends, came from groups that felt unfairly targeted by the increased penalty and groups that shared the Governor's concern that another increase in penalties could reduce the total amount of penalties collected.<sup>97</sup>

### C. *How Other States Provide Supplemental Funding for Emergency Medical and Pediatric Trauma Care*

California is not the only state that supplements funding for emergency medical and pediatric trauma care by assessing additional penalties on fines for violations of its Penal and Vehicle code.<sup>98</sup> Indeed, Illinois, Mississippi, Minnesota, Ohio, Pennsylvania, Rhode Island, Texas, and Utah add penalties or

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76000.5(b) (West Supp. 2009).

93. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1773, at 7 (Aug. 29, 2006). Registered opposition to Chapter 841 consisted of the California Department of Finance, the California Labor Federation (AFL-CIO), the California Teamsters Public Affairs Council, and the Commission on Peace Officer Standards and Training. *Id.*

94. *Id.* at 8. According to the survey conducted by the California Research Bureau, traffic violations account for roughly eighty-six percent of all criminal violations. NIETO, *supra* note 69, at 23. This data led the California Research Bureau to conclude that traffic offenses generate the highest percentage of revenues from penalties assessed on criminal violations. *Id.* at 22.

95. 1987 Cal. Stat. ch. 1240, §1(e). Section 1(e) of Chapter 1240, Statutes of 1987, states:

[I]t is the intent of the Legislature that the source of funding of emergency medical services be related to the incident of emergencies requiring immediate medical care. Thus, this act will levy an additional penalty assessment on traffic and other fines. In this way, the costs of emergency medical services shall be borne to a degree by those who have a relationship to creating the emergencies.

*Id.*

96. ASSEMBLY HEALTH COMMITTEE, COMMITTEE ANALYSIS OF SB 1773, at 10 (June 19, 2006).

97. See *id.* at 5-6 (discussing Governor Schwarzenegger's concern that the total amount of penalties would decrease in response to increasing penalty assessments); *id.* at 10 (discussing opposition to the 2006 amendment to existing law); NIETO, *supra* note 69, at 15, 25 (discussing possible explanations for diminishing returns in penalty collection).

98. See National Conference of State Legislatures, State Funding for Emergency Medical Services and Trauma Care, <http://www.ncsl.org/programs/health/traumafund.htm> (last visited Aug. 12, 2008) [hereinafter NCSL] (on file with the *McGeorge Law Review*) (providing "statutory and other information on some of the sources states use to fund emergency medical services and trauma care systems").

surcharges to criminal or traffic-violation fines.<sup>99</sup> Mississippi supplements trauma care funding by adding a five dollar penalty to every ten dollars assessed for traffic violations; this is more than twice the penalty rate authorized by the 2006 amendment to the California Health and Safety Code.<sup>100</sup> Minnesota, Texas, and Ohio designate revenues from seat-belt violation fines for supplemental emergency medical care funding.<sup>101</sup>

Not all states supplement funding for emergency medical services by assessing additional penalties on criminal or traffic violations.<sup>102</sup> Florida charges an additional tax on real property; Maryland and New Mexico assess taxes on annual vehicle registrations; Kentucky charges fees for commemorative birth certificates and marriage licenses.<sup>103</sup> Thus, California is not alone in assessing penalties on established fees in order to supplement funding for emergency medical care.<sup>104</sup>

## V. CONCLUSION

Chapter 60 extends the 2006 amendment to existing law for five years.<sup>105</sup> Thus, it allows counties to continue supplementing funding for emergency medical and pediatric trauma care by assessing a penalty on fines and fees for violations of the criminal, vehicle, and business codes.<sup>106</sup>

Support for and opposition to Chapter 60 and the 2006 amendment reflect competing concerns.<sup>107</sup> Chapter 60 may reduce funding for programs that rely on penalty assessments for revenues by increasing penalty assessments to the point of diminishing returns.<sup>108</sup> Furthermore, Chapter 60 provides much needed funds

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99. *Id.*

100. MISS. CODE ANN. § 41-59-75 (2001). The 2006 amendment to California law, which Chapter 60 extends, only authorizes an additional twenty percent penalty. CAL. GOV'T CODE § 76000.5 (amended by Chapter 60).

101. MINN. STAT. ANN. § 169.686 (West 2006); OHIO REV. CODE ANN. § 4513.263 (LexisNexis 2008); TEX. TRANSP. CODE ANN. § 545.413 (Vernon Supp. 2008).

102. *See* NCSL, *supra* note 98 (noting that some states assess taxes or fees on real property, vehicle registrations, birth certificates, or marriage licenses, or use “[l]ocal innovations” to supplement funding for emergency medical services).

103. FLA. STAT. ANN. § 125.271 (West Supp. 2009); KY. REV. STAT. ANN. § 213.143 (West 2006); MD. CODE ANN., TRANSP. § 13-955 (LexisNexis 2002 & Supp. 2003); N.M. STAT. ANN. § 24-10A-3 (LexisNexis 2000 & Supp. 2003).

104. *See* NCSL, *supra* note 98 (“[C]ontain[ing] statutory and other information on some of the sources states use to fund emergency medical services and trauma care systems.”).

105. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1236, at 2 (Apr. 15, 2008).

106. *Id.*

107. *Compare* SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF SB 1773, at 6 (Apr. 24, 2006) (quoting the Governor’s veto message regarding SB 57 of 2005 in which he expressed concern that increasing total penalty assessments would result in decreasing revenues for programs that already rely on penalty assessment funding), *with* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at 6-7 (June 10, 2008) (providing statements in support of extending existing law to allow counties to increase penalty assessments in order to raise additional funds for emergency medical and pediatric trauma care).

108. *See* NIETO, *supra* note 69, at 19 (stating that a central inquiry in a survey of California counties was

in the midst of a funding crisis in emergency medical and pediatric trauma care in California.<sup>109</sup> Ultimately, it is too soon to tell if the additional penalty extended by Chapter 60 will adversely impact the total revenues generated by penalty assessments.<sup>110</sup> Moreover, supporters have yet to prove that Maddy EMS Funds and Richie's Funds are capable of performing as well as predicted.<sup>111</sup>

However, local governments that have implemented the program claim that it is generating much-needed funding for emergency medical and pediatric trauma care.<sup>112</sup> Additionally, several other states supplement emergency medical services funding in a similar manner.<sup>113</sup> Chapter 60 may seem like a small step towards alleviating the crisis in emergency medical and pediatric trauma care because it merely extends the sunset date on existing legislation.<sup>114</sup> However, it has the potential to generate crucial funding, allowing counties to keep emergency departments open and improving access to pediatric trauma care, thereby giving children like Richie Alarcón a better chance for survival.<sup>115</sup>

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whether "there is a diminishing return on penalty revenues as a result of accumulative increases in the rate of assessed penalties").

109. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at G (Mar. 25, 2008).

110. See NIETO, *supra* note 69, at 1-2, 15-20 (explaining the complicated process of collecting revenues "for over 269 separate court fines, fees, forfeitures, surcharges and penalty assessments that may be levied on offenders and violators" in California and explaining the limitations counties face in collecting information on this process).

111. See Fujioka Letter, *supra* note 79 ("Because of the start-up time associated with administering penalties and collecting revenues, the program [in Los Angeles County] is unlikely to reach maximum revenue generation for several years."); SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF SB 1773, at 4 (Apr. 24, 2006) (stating that the author of SB 1773 predicts that the additional penalty will generate up to \$60 million annually based on "a \$20 increase on an average \$340 ticket payment").

112. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at 6 (June 10, 2008) (providing statements from the City and County of San Francisco and the County of Los Angeles regarding revenues they have generated through Chapter 841 (2006)).

113. NCSL, *supra* note 98 ("[C]ontain[ing] statutory and other information on some of the sources states use to fund emergency medical services and trauma care systems").

114. CAL. GOV'T CODE § 76000.5 (amended by Chapter 60); CAL. HEALTH & SAFETY CODE § 1797.98a (amended by Chapter 60).

115. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1236, at L (Mar. 25, 2008).