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Health and Welfare

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Health and Welfare

Health and Welfare; involuntary detention

Welfare and Institutions Code §5250.1 (new); §§5152.1, 5252, 5253, 5254, 5256, 5256.1, 5256.7, 5259.3, 5263, 5328 (amended).

AB 917 (Bates); 1983 STAT. Ch 319

Support: Department of Finance; Department of Mental Health

AB 1551 (Hauser); 1983 STAT. Ch 755

Existing law permits the involuntary detention of persons dangerously or gravely disabled as a result of a mental disorder¹ or inebriation² for seventy-two hours of treatment and evaluations.³ Thereafter, the person (hereinafter referred to as certified person)⁴ may be certified and detained for a period of up to fourteen days for the purpose of additional intensive treatment.

Under prior law, persons were informed, upon delivery of a copy of the notice of certification,⁵ that they were entitled to a certification review hearing⁶ within four days of the initial detention, unless judicial review was requested.⁷ This hearing could be postponed for forty-eight hours upon the request of the certified person.⁸ With the enactment of Chapter 319, certified persons are entitled to a review hearing within seven days of the initial detention, unless judicial review is requested.⁹ Postponement is permitted for forty-eight hours, or in countries with populations of 100,000 or less, until the next regularly scheduled hearing date.¹⁰

Existing law requires that certified persons be given oral notification of the decision at the conclusion of the certification review hearing.¹¹ The certified person's attorney or advocate also must receive written notification.

1. CAL. WELF. & INST. CODE §5150.

2. *Id.* §5170.

3. *Id.* §5250.

4. *Id.*

5. A copy of the certification notice must be personally delivered to the certified person. *Id.* §5253.

6. This hearing is to determine if probable cause exists to detain the person for intensive treatment of chronic alcoholism. *Id.* §5254.

7. 1982 Cal. Stat. c. 1598, §4, at 8767 (enacting CAL. WELF. & INST. CODE §5254).

8. *Id.* (enacting CAL. WELF. & INST. CODE §5256). This request also could have been made by the person's representing attorney or advocate. *Id.*

9. CAL. WELF. & INST. CODE §5254.

10. *Id.* §5256. An employee of a county mental health program or facility designated and approved by the county as a facility authorized to conduct treatment and evaluation for 72 hours is prohibited from serving as the certification review hearing officer. *Id.* §5256.1.

11. CAL. WELF. & INST. CODE §5256.7.

tion of the decision as soon as practicable.¹² Chapter 319 additionally requires that the written notification of the decision be provided to the superior court and the director of the facility in which the certified person is receiving treatment.¹³

Under prior law, the (1) professional person in charge of the facility providing intensive treatment or a designee, (2) court-appointed commissioner or referee, (3) certification review hearing officer, and (4) peace officer responsible for the person's detention, were not civilly or criminally liable for any action by a person released at or before the end of the fourteen days.¹⁴ Chapter 319 adds to this list of persons immune from civil or criminal liability the attorney or advocate representing the certified person.¹⁵

Under existing law, if the application for certification states that the person was referred to the facility under circumstances supporting a criminal charge, the professional person in charge of the facility must notify the county mental health director and the peace officer who filed the certification application, if the person is released or not detained within seventy-two hours.¹⁶ Under Chapter 755, notice consists only of providing the person's name, address, date of admission, and date of release.¹⁷ Finally, information obtained by a police officer or law enforcement agency pursuant to these notification requirements must be destroyed two years after the notice is received.¹⁸

12. *Id.*

13. *Id.*

14. 1982 Cal. Stat. c. 1598, §4, at 8767 (enacting CAL. WELF. & INST. CODE §5259.3).

15. CAL. WELF. & INST. CODE §5259.3.

16. *Id.* §5152.1. The peace officer must have requested notification in writing at the time of the application. *Id.*

17. Compare *id.* §5152.1(b) with 1975 Cal. Stat. c. 960, §3, at 2643 (enacting CAL. WELF. & INST. CODE §5152.1).

18. CAL. WELF. & INST. CODE §§5152(b), 5250.1(c).

Health and Welfare; abuse of elderly

Welfare and Institutions Code §§9380, 9381, 9382, 9383, 9384, 9385, 9386 (new); §§15610, 15620, 15621, 15631 (amended).

SB 1210 (Carpenter); 1983 STAT. Ch 1273

Support: California Conference of Catholic Charities; Department of Finance; Department of Social Services; County Welfare Directors Association; San Diego County

Chapter 1273 enacts provisions governing the reporting of suspected or

actual abuse of elderly¹ persons.² Pursuant to existing law, any person who witnesses or suspects that a dependent adult³ is the victim of abuse⁴ may report the incident to a county adult protective services agency.⁵ With the enactment of Chapter 1273, any elder care custodian,⁶ medical practitioner,⁷ nonmedical practitioner,⁸ or employee of an elder protective agency⁹ with *actual knowledge* that an elderly person has been the victim of physical abuse¹⁰ must report the suspected abuse to an elder protective agency by telephone.¹¹ A written report must follow the telephone report within thirty-six hours.¹²

Under Chapter 1273, when two or more persons are required to report a suspected incident of elder abuse,¹³ a single report¹⁴ may be compiled by a selected member of the group.¹⁵ Reporting elder abuse, however, is an individual responsibility that cannot be inhibited by the administrators and

1. CAL. WELF. & INST. CODE §9380(a) (elder is a person 65 years of age or older). Elder abuse includes one or more of the following acts inflicted by other than accidental means on an elder by another person; physical abuse, fiduciary abuse, neglect, or abandonment. *See id.* §§9380(b)-(f). *Compare id. with* 1982 Cal. Stat. c. 1184, §3, at ____ (enacting CAL. WELF. & INST. CODE §15610) (definition relating to elder abuse).

2. CAL. WELF. & INST. CODE §§9380-86. The intent of the Legislature is to establish a mechanism to document the extent and type of elder abuse to (1) evaluate the instances of elder abuse, and (2) plan and develop programs for elder abuse victims. 1983 Cal. Stat. c. 1273, §1, at ____.

3. A dependent adult is any person who has attained the age of 18 years or older who has physical, mental, or financial limitations that restrict the person's ability to carry out normal life activities. CAL. WELF. & INST. CODE §15610(6).

4. *Id.* §15610(l) (definition of abuse).

5. *Id.* §15630.

6. *Id.* §9380(g) (definition of elder care custodian).

7. *Id.* §9380(h) (definition of medical practitioner).

8. *Id.* §9380(i) (definition of nonmedical practitioner).

9. *Id.* §9380(j) (definition of elder protective agency).

10. Physical abuse means a situation in which any person who has the care or custody of, or who stands in a position of trust with, an elder willfully inflicts upon that elder any cruel or inhuman corporal punishment or injury. Physical abuse includes, but is not limited to, direct beatings, sexual assault, unreasonable physical constraint, or prolonged deprivation of food or water. *Id.* §9380(c). *See id.* §9381(c) (these specified personnel may also report suspected instances of infliction of mental distress). Mental suffering means deliberately subjecting a person to fear, agitation, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior. *Id.* §15610(5).

11. *Id.* §9381(a). A telephone report of suspected elder abuse must include the name of the person making the report, the name, address, and age of the elder, the nature and extent of the elderly person's condition, and any other information requested by the elder protective agency, including information that led the person to suspect elder abuse. *Id.* §9382(a). Information relevant to the incident of elder abuse may also be given to an investigator from an elder protective agency. *Id.* §9382(b). The receiving elder protective agency must relay the information to an appropriate law enforcement agency by telephone as soon as possible. *Id.* §9383(a).

12. *Id.* §9381(a) (to be submitted on forms adopted by the Department of Social Services). Each county must report to the Department of Social Services and the Legislature on the number of instances of elder abuse. *See id.* §9384. *See also id.* §§15620, 15621 (specifying the contents of the report).

13. *Id.* §9381(d) (where two or more persons are present and jointly have knowledge of the incident).

14. *Id.* (telephone and written report).

15. *Id.* Any member of the group who has knowledge that the report has not been made must make the report. *Id.*

supervisors of persons making the report.¹⁶ Chapter 1273 prohibits the imposition of sanctions for reporting elder abuse.¹⁷ Furthermore, specified personnel¹⁸ who possess knowledge that an elder has been physically abused, and who fail to report the incident, are guilty of a misdemeanor punishable by a fine of not more than \$1,000.¹⁹

The identity of all persons making reports pursuant to Chapter 1273 must remain confidential.²⁰ Moreover, Chapter 1273 specifies that certain privileges of confidentiality²¹ in court proceedings and administrative hearings do not apply to reported information regarding elder abuse.²² In addition, a person who reports will not be civilly or criminally liable for the report, unless the report was falsely made.²³

Unless a violation of the Penal Code has been charged, an elder protective agency may investigate only the alleged incident of elder abuse with the victim's consent.²⁴ Pursuant to Chapter 1273, an elder abuse victim may, at any time, refuse or withdraw consent to an investigation by an elder protective agency.²⁵ A petition for temporary conservatorship,²⁶ however, may be initiated when the victim is legally unable to give or deny consent.²⁷

16. *Id.* §9381(e).

17. *Id.* Internal procedures to facilitate reporting elder abuse, and to apprise supervisors and administrators of reports, may be established provided that these procedures are not inconsistent with the provisions of Chapter 1273. *Id.*

18. *See id.* (any elder care custodian, medical practitioner, nonmedical practitioner, or employee of an elder protective agency).

19. *Id.* Evidence of a final judgment adjudging a person guilty of a crime under this section is inadmissible when offered in a civil action to prove any fact essential to the civil action, whether or not the final judgment was based on a plea of *nolo contendere*. *Id.* §9386.

20. *Id.* §9382(c). The identity may be disclosed only by court order or between elder protective agencies. *Id.* Persons other than elder care custodians, medical practitioners, nonmedical practitioners, and employees of elder protective agencies are not required to include their names in the report. *See id.*

21. *Id.* §9382(e) (physician-patient and psychotherapist-patient privileges). Nothing in Chapter 1273 is to be interpreted as requiring an attorney to violate the oath and duties pursuant to California Business & Professions Code sections 6067, 6068(e) and California Evidence Code §§950-62. (relating to attorney-client privilege) *Id.*

22. *Id.* §9382(e).

23. *See id.* §9385 (and the person knew or should have known that the report was false).

24. *See id.* §9383(b).

25. *Id.*

26. *Id.* §9383(c). This petition must be initiated pursuant to provisions of existing law. *See* CAL. PROB. CODE §2250.

27. CAL. WELF. & INST. CODE §9383(c) (if the victim is incapacitated).

Health and Welfare; disclosure of genetic information.

Welfare & Institutions Code §§5328, 5328.1 (amended).

SB 162 (Watson); 1983 STAT. Ch 1174

Support: California Alliance for the Mentally Ill; Department of Fi-

nance; Department of Mental Health

Physicians have an ethical duty not to reveal information obtained in the context of the physician-patient relationship,¹ unless the disclosure is required by law² or is necessary to protect the welfare of the individual or the community.³ Chapter 1174 expands existing provisions governing the release of information compiled in the context of the physician-patient relationship to include information concerning genetically handicapping conditions.⁴ Chapter 1174 directs that information about genetically handicapping conditions may be released to qualified professionals⁵ in either of the following two situations: (1) when the information is to be used for the genetic counseling of the patient's blood relatives and the patient consents to the release of this information,⁶ or (2) upon the request of the patient's blood relatives if the patient does not or cannot respond after two weeks of reasonable attempts to obtain permission for release of the information.⁷

Under existing law, when a mental health patient is admitted to a public or private health facility, the facility thereafter must reasonably attempt to notify the patient's next of kin about the patient's admission, release, transfer, serious illness, injury, or death.⁸ With the enactment of Chapter 1174, patients must be advised that they have the right to prevent the release of this information.⁹ Furthermore, Chapter 1174 provides immunity from liability to public and private entities and their employees for damages caused or alleged to have been caused by the release or concealment of this information concerning the patient.¹⁰

1. CAL. EVID. CODE §990 (definition of physician); *id.* §991 (definition of patient). Under the common law, physician-patient communications are not protected as confidential. R. MORRIS, & A. MORITZ, *DOCTOR AND PATIENT AND THE LAW* 288 (5th ed. 1971); *See also* Cooper, *The Physician's Dilemma*, 22 ST. LOUIS U.L.J. 397 (1978).

2. Many states have statutes directing genetic screening for genetic diseases such as phenylketonuria (PKU), Tay-Sachs disease, Sickle Cell Anemia, and Hemophilia. Grant, *Genetic Control and the Law*, 24 MED. TRIAL TECH. Q. 306, 319; *see, e.g.*, CAL. HEALTH & SAFETY CODE §§309, 340-348; CAL. CIV. CODE §4302.

3. A.M.A. PRINCIPLES OF MEDICAL ETHICS §9.

4. Compare CAL. WELF. & INST. CODE §5328 with 1982 Cal. Stat. c. 1415, §1, at 7649 (amending CAL. WELF. & INST. CODE §5328). CAL. WELF. & INST. CODE §341.5 (definition of genetically handicapping condition).

5. CAL. WELF. & INST. CODE §5328(9) (definition of qualified professional persons).

6. *Id.* §5328(q).

7. *Id.*

8. *Id.* §5328.1(b).

9. *Id.*

10. *Id.* §5328.1(c).

