

ASSEMBLY BILL

No. 681

Introduced by Assembly Member Ramos

February 12, 2021

An act to amend Section 5328 of, and to add Section 5406 to, the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

AB 681, as introduced, Ramos. Mental health: information sharing.

Existing law, the Children's Civil Commitment and Mental Health Treatment Act of 1988, authorizes a minor, if they are a danger to self or others, or they are gravely disabled, as a result of a mental health disorder, and authorization for voluntary treatment is not available, upon probable cause, to be taken into custody and placed in a facility designated by the county and approved by the State Department of Health Care Services as a facility for 72-hour treatment and evaluation of minors.

Existing law, the Lanterman-Petris-Short Act, also authorizes the involuntary commitment and treatment of persons with specified mental health disorders. Under the act, if a person, as a result of a mental health disorder, is a danger to self or others, or is gravely disabled, the person may, upon probable cause, be taken into custody and placed in a facility designated by the county and approved by the State Department of Health Care Services for up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment.

Existing law prohibits a person detained pursuant to the Lanterman-Petris-Short Act because the person is a danger to self or others, from owning, possessing, controlling, receiving, or purchasing, or attempting to own, possess, control, receive, or purchase, any firearm.

In order for the Department of Justice to determine the eligibility of the person to own, possess, control, receive, or purchase a firearm, existing law requires each designated facility, within 24 hours of admitting an individual subject to that prohibition, to submit a report to the Department of Justice that contains specified information, including the identity of the person.

This bill would require the Department of Justice to provide to the State Department of Health Care Services a copy of reports submitted pursuant to those provisions.

The bill would also require a designated facility to submit a quarterly report to the State Department of Health Care Services that identifies people admitted to the facility pursuant to the Lanterman-Petris-Short Act because the person is gravely disabled and minors admitted pursuant to the Children's Civil Commitment and Mental Health Treatment Act of 1988 who are younger than 13 years of age. The bill would require the designated facility to include in the report the same information required to be reported to the Department of Justice for individuals who are subject to the above-described firearms restrictions. The bill would authorize the State Department of Health Care Services, after the department consults with behavioral health stakeholders, to require a designated facility to include additional information in the quarterly report.

The bill would require the State Department of Health Care Services to annually submit a publicly accessible report to the Legislature of deidentified and aggregated data received pursuant to these provisions, as specified. The bill would require the State Department of Health Care Services to implement these provisions no later than July 1, 2022.

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

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

1 SECTION 1. Section 5328 of the Welfare and Institutions Code
2 is amended to read:
3 5328. (a) All information and records obtained in the course
4 of providing services under Division 4 (commencing with Section
5 4000), Division 4.1 (commencing with Section 4400), Division
6 4.5 (commencing with Section 4500), Division 5 (commencing
7 with Section 5000), Division 6 (commencing with Section 6000),
8 or Division 7 (commencing with Section 7100), to either voluntary

1 or involuntary recipients of services are confidential. Information
2 and records obtained in the course of providing similar services
3 to either voluntary or involuntary recipients before 1969 are also
4 confidential. Information and records shall be disclosed only in
5 any of the following cases:

6 (1) In communications between qualified professional persons
7 in the provision of services or appropriate referrals, or in the course
8 of conservatorship proceedings. The consent of the patient, or ~~his~~
~~or her~~ *the patient's* guardian or conservator, shall be obtained
10 before information or records may be disclosed by a professional
11 person employed by a facility to a professional person not
12 employed by the facility who does not have the medical or
13 psychological responsibility for the patient's care.

14 (2) If the patient, with the approval of the physician and surgeon,
15 licensed psychologist, social worker with a master's degree in
16 social work, licensed marriage and family therapist, or licensed
17 professional clinical counselor, who is in charge of the patient,
18 designates persons to whom information or records may be
19 released, except that this article does not compel a physician and
20 surgeon, licensed psychologist, social worker with a master's
21 degree in social work, licensed marriage and family therapist,
22 licensed professional clinical counselor, nurse, attorney, or other
23 professional person to reveal information that has been given to
24 ~~him or her~~ *them* in confidence by members of a patient's family.
25 This paragraph does not authorize a licensed marriage and family
26 therapist or licensed professional clinical counselor to provide
27 services or to be in charge of a patient's care beyond ~~his or her~~
28 *their* lawful scope of practice.

29 (3) To the extent necessary for a recipient to make a claim, or
30 for a claim to be made on behalf of a recipient for aid, insurance,
31 or medical assistance to which ~~he or she~~ *the recipient* may be
32 entitled.

33 (4) If the recipient of services is a minor, ward, dependent, or
34 conservatee, and ~~his or her~~ *their* parent, guardian, guardian ad
35 litem, conservator, or authorized representative designates, in
36 writing, persons to whom records or information may be disclosed,
37 except that this article does not compel a physician and surgeon,
38 licensed psychologist, social worker with a master's degree in
39 social work, licensed marriage and family therapist, licensed
40 professional clinical counselor, nurse, attorney, or other

1 professional person to reveal information that has been given to
2 ~~him or her~~ *them* in confidence by members of a patient's family.
3 (5) For research, provided that the Director of Health Care
4 Services, the Director of State Hospitals, the Director of Social
5 Services, or the Director of Developmental Services designates
6 by regulation, rules for the conduct of research and requires the
7 research to be first reviewed by the appropriate institutional review
8 board or boards. The rules shall include, but need not be limited
9 to, the requirement that all researchers shall sign an oath of
10 confidentiality as follows:

11

12

13

Date

14

15 As a condition of doing research concerning persons who have
16 received services from ____ (fill in the facility, agency, or person),
17 I, ____, agree to obtain the prior informed consent of those persons
18 who have received services to the maximum degree possible as
19 determined by the appropriate institutional review board or boards
20 for protection of human subjects reviewing my research, and I
21 further agree not to divulge any information obtained in the course
22 of that research to unauthorized persons, and not to publish or
23 otherwise make public any information regarding persons who
24 have received services such that the person who received services
25 is identifiable.

26 I recognize that the unauthorized release of confidential
27 information may make me subject to a civil action under provisions
28 of the Welfare and Institutions Code.

29

30 (6) To the courts, as necessary to the administration of justice.

31 (7) To governmental law enforcement agencies as needed for
32 the protection of federal and state elective constitutional officers
33 and their families.

34 (8) To the Senate Committee on Rules or the Assembly
35 Committee on Rules for the purposes of legislative investigation
36 authorized by the committee.

37 (9) If the recipient of services who applies for life or disability
38 insurance designates in writing the insurer to which records or
39 information may be disclosed.

1 (10) To the attorney for the patient in any and all proceedings
2 upon presentation of a release of information signed by the patient,
3 except that when the patient is unable to sign the release, the staff
4 of the facility, upon satisfying itself of the identity of the attorney,
5 and of the fact that the attorney does represent the interests of the
6 patient, may release all information and records relating to the
7 patient, except that this article does not compel a physician and
8 surgeon, licensed psychologist, social worker with a master's
9 degree in social work, licensed marriage and family therapist,
10 licensed professional clinical counselor, nurse, attorney, or other
11 professional person to reveal information that has been given to
12 ~~him or her~~ *them* in confidence by members of a patient's family.

13 (11) Upon written agreement by a person previously confined
14 in or otherwise treated by a facility, the professional person in
15 charge of the facility or ~~his or her~~ *their* designee may release any
16 information, except information that has been given in confidence
17 by members of the person's family, requested by a probation officer
18 charged with the evaluation of the person after ~~his or her~~ *the*
19 *person's* conviction of a crime if the professional person in charge
20 of the facility determines that the information is relevant to the
21 evaluation. The agreement shall only be operative until sentence
22 is passed on the crime of which the person was convicted. The
23 confidential information released pursuant to this paragraph shall
24 be transmitted to the court separately from the probation report
25 and shall not be placed in the probation report. The confidential
26 information shall remain confidential except for purposes of
27 sentencing. After sentencing, the confidential information shall be
28 sealed.

29 (12) (A) Between persons who are trained and qualified to serve
30 on multidisciplinary personnel teams pursuant to subdivision (d)
31 of Section 18951. The information and records sought to be
32 disclosed shall be relevant to the provision of child welfare services
33 or the investigation, prevention, identification, management, or
34 treatment of child abuse or neglect pursuant to Chapter 11
35 (commencing with Section 18950) of Part 6 of Division 9.
36 Information obtained pursuant to this paragraph shall not be used
37 in any criminal or delinquency proceeding. This paragraph does
38 not prohibit evidence identical to that contained within the records
39 from being admissible in a criminal or delinquency proceeding, if

1 the evidence is derived solely from means other than this
2 paragraph, as permitted by law.

3 (B) As used in this paragraph, "child welfare services" means
4 those services that are directed at preventing child abuse or neglect.

5 (13) To county patients' rights advocates who have been given
6 knowing voluntary authorization by a client or a guardian ad litem.
7 The client or guardian ad litem, whoever entered into the
8 agreement, may revoke the authorization at any time, either in
9 writing or by oral declaration to an approved advocate.

10 (14) To a committee established in compliance with Section
11 14725.

12 (15) In providing information as described in Section 7325.5.
13 This paragraph does not permit the release of any information
14 other than that described in Section 7325.5.

15 (16) To the county behavioral health director or the director's
16 designee, or to a law enforcement officer, or to the person
17 designated by a law enforcement agency, pursuant to Sections
18 5152.1 and 5250.1.

19 (17) If the patient gives ~~his or her~~ *their* consent, information
20 specifically pertaining to the existence of genetically handicapping
21 conditions, as defined in Section 125135 of the Health and Safety
22 Code, may be released to qualified professional persons for
23 purposes of genetic counseling for blood relatives upon request of
24 the blood relative. For purposes of this paragraph, "qualified
25 professional persons" means those persons with the qualifications
26 necessary to carry out the genetic counseling duties under this
27 paragraph as determined by the genetic disease unit established in
28 the State Department of Health Care Services under Section 125000
29 of the Health and Safety Code. If the patient does not respond or
30 cannot respond to a request for permission to release information
31 pursuant to this paragraph after reasonable attempts have been
32 made over a two-week period to get a response, the information
33 may be released upon request of the blood relative.

34 (18) If the patient, in the opinion of ~~his or her~~ *their* psychotherapist,
35 presents a serious danger of violence to a
36 reasonably foreseeable victim or victims, then any of the
37 information or records specified in this section may be released to
38 that person or persons and to law enforcement agencies and county
39 child welfare agencies as the psychotherapist determines is needed
40 for the protection of that person or persons. For purposes of this

1 paragraph, “psychotherapist” has the same meaning as provided
2 in Section 1010 of the Evidence Code.

3 (19) (A) To the designated officer of an emergency response
4 employee, and from that designated officer to an emergency
5 response employee regarding possible exposure to HIV or AIDS,
6 but only to the extent necessary to comply with the federal Ryan
7 White Comprehensive AIDS Resources Emergency Act of 1990
8 (Public Law 101-381; 42 U.S.C. Sec. 201).

9 (B) For purposes of this paragraph, “designated officer” and
10 “emergency response employee” have the same meaning as these
11 terms are used in the federal Ryan White Comprehensive AIDS
12 Resources Emergency Act of 1990 (Public Law 101-381; 42 U.S.C.
13 Sec. 201).

14 (C) The designated officer shall be subject to the confidentiality
15 requirements specified in Section 120980 of the Health and Safety
16 Code, and may be personally liable for unauthorized release of
17 any identifying information about the HIV results. Further, the
18 designated officer shall inform the exposed emergency response
19 employee that the employee is also subject to the confidentiality
20 requirements specified in Section 120980 of the Health and Safety
21 Code, and may be personally liable for unauthorized release of
22 any identifying information about the HIV test results.

23 (20) (A) To a law enforcement officer who personally lodges
24 with a facility, as defined in subparagraph (B), a warrant of arrest
25 or an abstract of a warrant showing that the person sought is wanted
26 for a serious felony, as defined in Section 1192.7 of the Penal
27 Code, or a violent felony, as defined in Section 667.5 of the Penal
28 Code. The information sought and released shall be limited to
29 whether or not the person named in the arrest warrant is presently
30 confined in the facility. This subparagraph shall be implemented
31 with minimum disruption to health facility operations and patients,
32 in accordance with Section 5212. If the law enforcement officer
33 is informed that the person named in the warrant is confined in the
34 facility, the officer may not enter the facility to arrest the person
35 without obtaining a valid search warrant or the permission of staff
36 of the facility.

37 (B) For purposes of subparagraph (A), a facility means all of
38 the following:

39 (i) A state hospital, as defined in Section 4001.

- 1 (ii) A general acute care hospital, as defined in subdivision (a)
2 of Section 1250 of the Health and Safety Code, solely with regard
3 to information pertaining to a person with mental illness subject
4 to this section.
- 5 (iii) An acute psychiatric hospital, as defined in subdivision (b)
6 of Section 1250 of the Health and Safety Code.
- 7 (iv) A psychiatric health facility, as described in Section 1250.2
8 of the Health and Safety Code.
- 9 (v) A mental health rehabilitation center, as described in Section
10 5675.
- 11 (vi) A skilled nursing facility with a special treatment program
12 for individuals with mental illness, as described in Sections 51335
13 and 72445 to 72475, inclusive, of Title 22 of the California Code
14 of Regulations.
- 15 (21) Between persons who are trained and qualified to serve on
16 multidisciplinary personnel teams pursuant to Section 15610.55.
17 The information and records sought to be disclosed shall be
18 relevant to the prevention, identification, management, or treatment
19 of an abused elder or dependent adult pursuant to Chapter 13
20 (commencing with Section 15750) of Part 3 of Division 9.
- 21 (22) (A) When an employee is served with a notice of adverse
22 action, as defined in Section 19570 of the Government Code, all
23 of the following information and records may be released:
- 24 (i) All information and records that the appointing authority
25 relied upon in issuing the notice of adverse action.
- 26 (ii) All other information and records that are relevant to the
27 adverse action, or that would constitute relevant evidence as
28 defined in Section 210 of the Evidence Code.
- 29 (iii) The information described in clauses (i) and (ii) may be
30 released only if both of the following conditions are met:
31 (I) The appointing authority has provided written notice to the
32 consumer and the consumer's legal representative or, if the
33 consumer has no legal representative or if the legal representative
34 is a state agency, to the clients' rights advocate, and the consumer,
35 the consumer's legal representative, or the clients' rights advocate
36 has not objected in writing to the appointing authority within five
37 business days of receipt of the notice, or the appointing authority,
38 upon review of the objection, has determined that the circumstances
39 on which the adverse action is based are egregious or threaten the

1 health, safety, or life of the consumer or other consumers and
2 without the information the adverse action could not be taken.

3 (II) The appointing authority, the person against whom the
4 adverse action has been taken, and the person's representative, if
5 any, have entered into a stipulation that does all of the following:

6 (ia) Prohibits the parties from disclosing or using the information
7 or records for any purpose other than the proceedings for which
8 the information or records were requested or provided.

9 (ib) Requires the employee and the employee's legal
10 representative to return to the appointing authority all records
11 provided to them under this paragraph, including, but not limited
12 to, all records and documents from any source containing
13 confidential information protected by this section, and all copies
14 of those records and documents, within 10 days of the date that
15 the adverse action becomes final, except for the actual records and
16 documents or copies thereof that are no longer in the possession
17 of the employee or the employee's legal representative because
18 they were submitted to the administrative tribunal as a component
19 of an appeal from the adverse action.

20 (ic) Requires the parties to submit the stipulation to the
21 administrative tribunal with jurisdiction over the adverse action
22 at the earliest possible opportunity.

23 (B) For purposes of this paragraph, the State Personnel Board
24 may, before any appeal from adverse action being filed with it,
25 issue a protective order, upon application by the appointing
26 authority, for the limited purpose of prohibiting the parties from
27 disclosing or using information or records for any purpose other
28 than the proceeding for which the information or records were
29 requested or provided, and to require the employee or the
30 employee's legal representative to return to the appointing authority
31 all records provided to them under this paragraph, including, but
32 not limited to, all records and documents from any source
33 containing confidential information protected by this section, and
34 all copies of those records and documents, within 10 days of the
35 date that the adverse action becomes final, except for the actual
36 records and documents or copies thereof that are no longer in the
37 possession of the employee or the employee's legal representatives
38 because they were submitted to the administrative tribunal as a
39 component of an appeal from the adverse action.

1 (C) Individual identifiers, including, but not limited to, names,
2 social security numbers, and hospital numbers, that are not
3 necessary for the prosecution or defense of the adverse action,
4 shall not be disclosed.

5 (D) All records, documents, or other materials containing
6 confidential information protected by this section that have been
7 submitted or otherwise disclosed to the administrative agency or
8 other person as a component of an appeal from an adverse action
9 shall, upon proper motion by the appointing authority to the
10 administrative tribunal, be placed under administrative seal and
11 shall not, thereafter, be subject to disclosure to any person or entity
12 except upon the issuance of an order of a court of competent
13 jurisdiction.

14 (E) For purposes of this paragraph, an adverse action becomes
15 final when the employee fails to answer within the time specified
16 in Section 19575 of the Government Code, or, after filing an
17 answer, withdraws the appeal, or, upon exhaustion of the
18 administrative appeal or of the judicial review remedies as
19 otherwise provided by law.

20 (23) To the person appointed as the developmental services
21 decisionmaker for a minor, dependent, or ward pursuant to Section
22 319, 361, or 726.

23 (24) During the provision of emergency services and care, as
24 defined in Section 1317.1 of the Health and Safety Code, the
25 communication of patient information between a physician and
26 surgeon, licensed psychologist, social worker with a master's
27 degree in social work, licensed marriage and family therapist,
28 licensed professional clinical counselor, nurse, emergency medical
29 personnel at the scene of an emergency or in an emergency medical
30 transport vehicle, or other professional person or emergency
31 medical personnel at a health facility licensed pursuant to Chapter
32 2 (commencing with Section 1250) of Division 2 of the Health
33 and Safety Code.

34 (25) To a business associate or for health care operations
35 purposes, in accordance with Part 160 (commencing with Section
36 160.101) and Part 164 (commencing with Section 164.102) of
37 Subchapter C of Subtitle A of Title 45 of the Code of Federal
38 Regulations.

39 (26) *To the State Department of Health Care Services for the*
40 *purposes of Section 5406.*

1 (b) The amendment of paragraph (4) of subdivision (a) enacted
2 at the 1970 Regular Session of the Legislature does not constitute
3 a change in, but is declaratory of, the preexisting law.

4 (c) This section is not limited by Section 5150.05 or 5332.

5 SEC. 2. Section 5406 is added to the Welfare and Institutions
6 Code, to read:

7 5406. (a) In order for the State Department of Health Care
8 Services to administer and oversee this part, both of the following
9 shall occur:

10 (1) Notwithstanding clause (ii) of subparagraph (A) of paragraph
11 (2) of subdivision (f) of Section 8103, the Department of Justice
12 shall electronically submit copies of the reports it receives pursuant
13 to clause (i) of subparagraph (A) of paragraph (2) of subdivision
14 (f) of Section 8103 to the State Department of Health Care
15 Services.

16 (2) (A) For purposes of this subdivision, “eligible individual”
17 means a person who has been admitted to a designated facility
18 pursuant to Article 1 (commencing with Section 5150) of Chapter
19 2 because the person is gravely disabled or pursuant to Part 1.5
20 (commencing with Section 5585) if the person is younger than 13
21 years of age.

22 (B) (i) A designated facility shall submit a quarterly report to
23 the State Department of Health Care Services identifying all
24 eligible individuals admitted to the facility. The report shall be
25 submitted by electronic means in a form prescribed by the State
26 Department of Health Care Services. The report shall contain the
27 information required to be reported pursuant to clause (i) of
28 subparagraph (A) of paragraph (2) of subdivision (f) of Section
29 8103 and, after the department conducts the consultation required
30 by clause (ii), any additional information required by the
31 department. The department shall not impose any requirements to
32 submit additional information pursuant to this subparagraph until
33 conducting the consultation required by clause (ii).

34 (ii) If the State Department of Health Care Services determines
35 that it needs additional information relating to eligible individuals,
36 the department shall consult with behavioral health stakeholders,
37 including, but not limited to, representatives of mental health
38 consumers who have been eligible individuals, county behavioral
39 health agencies, and designated facilities to develop
40 recommendations for additional information to be submitted.

1 (b) The State Department of Health Care Services shall, in
2 consultation with the Department of Justice, align the reporting
3 requirements required by this section with the reporting
4 requirements in Section 8103 so that the reporting requirements
5 are consistent.

6 (c) (1) The State Department of Health Care Services shall
7 annually submit a publicly accessible report to the Legislature of
8 the deidentified, aggregated statewide number of individuals for
9 whom the department received information pursuant to subdivision
10 (a), stratified by county, ethnicity, gender, and Medi-Cal enrollment
11 status. The report shall include recommendations to the Legislature
12 to reduce disparities in mental health treatment across the state.

13 (2) A report to be submitted pursuant to subdivision (a) shall
14 be submitted in compliance with Section 9795 of the Government
15 Code.

16 (d) The department shall implement the requirements of this
17 section no later than July 1, 2022.