

AMENDED IN SENATE JUNE 18, 2013

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 10, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1340

Introduced by Assembly Member Achadjian

February 22, 2013

An act to amend Sections 1180.1 and 1180.2 of, and to add Section 1255.9 to, the Health and Safety Code, and to amend Sections 4100 and 7200 of, and to add Sections ~~4142 and 4142~~, 4143 to, and 4144 to, the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1340, as amended, Achadjian. State Hospital Employees Act.

Existing law establishes state hospitals for the care, treatment, and education of mentally disordered persons. These hospitals are under the jurisdiction of the State Department of State Hospitals, which is authorized by existing law to adopt regulations regarding the conduct and management of these facilities. Existing law requires each state hospital to develop an incident reporting procedure that can be used to, at a minimum, develop reports of patient assaults on employees and assist the hospital in identifying risks of patient assaults on employees. *Existing law provides for the licensure and regulation of health facilities, including acute psychiatric hospitals, by the State Department of Public Health. A violation of these provisions is a crime.*

~~This bill, as of July 1, 2015, bill would establish an Enhanced Treatment Facility and specified programs within the State Department of State Hospitals, and subject to available funding, would require each state hospital to establish and maintain an enhanced treatment unit (ETU) as part of its facilities and facilities. The bill would authorize an acute psychiatric hospital under the jurisdiction of the department to be licensed to offer an ETU that meets specified requirements, including that each room be limited to one patient, and would authorize the department to adopt and implement policies and procedures, as specified. Because the bill would create a new crime, it imposes a state-mandated local program.~~

~~The bill would also require any case of assault by a patient of a state hospital, as specified, to be immediately referred to the local district attorney, and if, after the referral, the patient is found guilty of a misdemeanor or a felony assault, the local district attorney declines to prosecute, or the patient is found incompetent to stand trial or not guilty by reason of insanity, the bill would require the patient to be placed in the enhanced treatment unit ETU of the hospital until the patient is deemed safe to return to the regular population of the hospital.~~

~~The bill would authorize a state hospital psychiatrist or psychologist to refer a patient to an ETU for temporary placement and risk assessment upon determining that the patient may pose a substantial risk of inpatient aggression. The bill would require a forensic needs assessment panel (FNAP) to conduct a placement evaluation to determine whether the patient meets the threshold standard for treatment in an enhanced treatment program (ETP). The bill would require, if the FNAP determines that the ETU placement is appropriate, that the FNAP certify the patient for 90 days of ETP placement and provide the determination in writing to the patient and the patient's advocate. The bill would also require a forensic needs assessment team (FNAT) psychologist to perform an in-depth clinical assessment and make a treatment plan upon the patient's admission to an ETP. The bill would require the FNAP to meet with specified individuals to determine whether the patient may stay in the ETP placement or return to a standard security treatment setting and provide the determination in writing to the patient's advocate. If the FNAP determines the patient is no longer appropriate for ETP placement, the FNAP may refer the patient to the 7-day step down unit, as defined, or a standard security setting in a department hospital.~~

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 no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. This act may be known and cited as the State
2 Hospital Employees Act.

3 *SEC. 2. Section 1180.1 of the Health and Safety Code is*
4 *amended to read:*

5 1180.1. For purposes of this division, the following definitions
6 apply:

7 (a) "Behavioral restraint" means "mechanical restraint" or
8 "physical restraint" as defined in this section, used as an
9 intervention when a person presents an immediate danger to self
10 or to others. It does not include restraints used for medical
11 purposes, including, but not limited to, securing an intravenous
12 needle or immobilizing a person for a surgical procedure, or
13 postural restraints, or devices used to prevent injury or to improve
14 a person's mobility and independent functioning rather than to
15 restrict movement.

16 (b) "Containment" means a brief physical restraint of a person
17 for the purpose of effectively gaining quick control of a person
18 who is aggressive or agitated or who is a danger to self or others.
19 "Containment" does not include admission into an enhanced
20 treatment unit or enhanced treatment facility, as defined in
21 subdivision (k) of Section 4144 of the Welfare and Institutions
22 Code.

23 (c) "Mechanical restraint" means the use of a mechanical device,
24 material, or equipment attached or adjacent to the person's body
25 that he or she cannot easily remove and that restricts the freedom
26 of movement of all or part of a person's body or restricts normal
27 access to the person's body, and that is used as a behavioral
28 restraint.

1 (d) “Physical restraint” means the use of a manual hold to restrict
2 freedom of movement of all or part of a person’s body, or to restrict
3 normal access to the person’s body, and that is used as a behavioral
4 restraint. “Physical restraint” is staff-to-person physical contact in
5 which the person unwillingly participates. “Physical restraint”
6 does not include briefly holding a person without undue force in
7 order to calm or comfort, or physical contact intended to gently
8 assist a person in performing tasks or to guide or assist a person
9 from one area to another.

10 (e) “Seclusion” means the involuntary confinement of a person
11 alone in a room or an area from which the person is physically
12 prevented from leaving. “Seclusion” does not include a “timeout,”
13 as defined in regulations relating to facilities operated by the State
14 Department of Developmental ~~Services~~. *Services, nor does*
15 *”seclusion” include admission into an enhanced treatment unit*
16 *or enhanced treatment facility, as defined in subdivision (k) of*
17 *Section 4144 of the Welfare and Institutions Code.*

18 (f) “Secretary” means the Secretary of California Health and
19 Human Services.

20 (g) “Serious injury” means significant impairment of the
21 physical condition as determined by qualified medical personnel,
22 and includes, but is not limited to, burns, lacerations, bone
23 fractures, substantial hematoma, or injuries to internal organs.

24 *SEC. 3. Section 1180.2 of the Health and Safety Code is*
25 *amended to read:*

26 1180.2. (a) This section shall apply to the state hospitals, *the*
27 *enhanced treatment units, and the enhanced treatment facility*
28 *operated by the State Department of State Hospitals, as listed in*
29 *Section 7200 of the Welfare and Institutions Code, and facilities*
30 *operated by the State Department of Developmental Services that*
31 *utilize seclusion or behavioral restraints.*

32 (b) The State Department of State Hospitals and the State
33 Department of Developmental Services shall develop technical
34 assistance and training programs to support the efforts of facilities
35 described in subdivision (a) to reduce or eliminate the use of
36 seclusion and behavioral restraints in those facilities.

37 (c) Technical assistance and training programs should be
38 designed with the input of stakeholders, including clients and direct
39 care staff, and should be based on best practices that lead to the

1 avoidance of the use of seclusion and behavioral restraints,
2 including, but not limited to, all of the following:

3 (1) Conducting an intake assessment that is consistent with
4 facility policies and that includes issues specific to the use of
5 seclusion and behavioral restraints as specified in Section 1180.4.

6 (2) Utilizing strategies to engage clients collaboratively in
7 assessment, avoidance, and management of crisis situations in
8 order to prevent incidents of the use of seclusion and behavioral
9 restraints.

10 (3) Recognizing and responding appropriately to underlying
11 reasons for escalating behavior.

12 (4) Utilizing conflict resolution, effective communication,
13 deescalation, and client-centered problem solving strategies that
14 diffuse and safely resolve emerging crisis situations.

15 (5) Individual treatment planning that identifies risk factors,
16 positive early intervention strategies, and strategies to minimize
17 time spent in seclusion or behavioral restraints. Individual treatment
18 planning should include input from the person affected.

19 (6) While minimizing the duration of time spent in seclusion or
20 behavioral restraints, using strategies to mitigate the emotional
21 and physical discomfort and ensure the safety of the person
22 involved in seclusion or behavioral restraints, including input from
23 the person about what would alleviate his or her distress.

24 (7) Training in conducting an effective debriefing meeting as
25 specified in Section 1180.5, including the appropriate persons to
26 involve, the voluntary participation of the person who has been in
27 seclusion or behavioral restraints, and strategic interventions to
28 engage affected persons in the process. The training should include
29 strategies that result in maximum participation and comfort for
30 the involved parties to identify factors that lead to the use of
31 seclusion and behavioral restraints and factors that would reduce
32 the likelihood of future incidents.

33 (d) (1) The State Department of State Hospitals and the State
34 Department of Developmental Services shall take steps to establish
35 a system of mandatory, consistent, timely, and publicly accessible
36 data collection regarding the use of seclusion and behavioral
37 restraints in facilities described in this section. It is the intent of
38 the Legislature that data be compiled in a manner that allows for
39 standard statistical comparison.

1 (2) The State Department of State Hospitals and the State
2 Department of Developmental Services shall develop a mechanism
3 for making this information publicly available on the Internet.

4 (3) Data collected pursuant to this section shall include all of
5 the following:

6 (A) The number of deaths that occur while persons are in
7 seclusion or behavioral restraints, or where it is reasonable to
8 assume that a death was proximately related to the use of seclusion
9 or behavioral restraints.

10 (B) The number of serious injuries sustained by persons while
11 in seclusion or subject to behavioral restraints.

12 (C) The number of serious injuries sustained by staff that occur
13 during the use of seclusion or behavioral restraints.

14 (D) The number of incidents of seclusion.

15 (E) The number of incidents of use of behavioral restraints.

16 (F) The duration of time spent per incident in seclusion.

17 (G) The duration of time spent per incident subject to behavioral
18 restraints.

19 (H) The number of times an involuntary emergency medication
20 is used to control behavior, as defined by the State Department of
21 State Hospitals.

22 (e) A facility described in subdivision (a) shall report each death
23 or serious injury of a person occurring during, or related to, the
24 use of seclusion or behavioral restraints. This report shall be made
25 to the agency designated in subdivision (i) of Section 4900 of the
26 Welfare and Institutions Code no later than the close of the business
27 day following the death or injury. The report shall include the
28 encrypted identifier of the person involved, and the name, street
29 address, and telephone number of the facility.

30 *SEC. 4. Section 1255.9 is added to the Health and Safety Code,*
31 *to read:*

32 *1255.9. (a) On and after January 1, 2018, an acute psychiatric*
33 *hospital that is operated by the State Department of State Hospitals*
34 *may be licensed by the State Department of Public Health to offer,*
35 *as a special service, an enhanced treatment unit (ETU) to provide*
36 *treatment to the most violent patients.*

37 *(b) An ETU shall meet all of the following requirements:*

38 *(1) Maintain a staff-to-patient ratio of one-to-five.*

39 *(2) Limit each room to one patient.*

1 (3) Each patient room shall allow visual access by staff 24 hours
2 per day.

3 (4) Each patient room shall have a private bathroom in the
4 room.

5 (c) Each patient room may have the capacity to lock the door
6 externally.

7 (d) An acute psychiatric hospital that has an approved ETU on
8 its license shall adopt and implement policies and procedures that
9 provide for all of the following:

10 (1) A definition of patients considered to be “most violent.”

11 (2) A process for a clinical assessment and review focused on
12 behavior, history, dangerousness, and clinical need for patients
13 who have been designated to receive treatment in an ETU.

14 (3) A process for a risk for violence assessment that meets the
15 criteria for treatment in an ETU.

16 (4) A process for a continuum of care with an ETU appropriate
17 for each patient’s need.

18 (5) A process for a phased treatment plan with regular clinical
19 review and reevaluation of placement back into an appropriate
20 unit for less violent patients that includes discharge planning
21 designed to achieve a quick and safe transition out of an ETU.

22 (6) A process for continual oversight and enhanced treatment
23 focused on the individual physical and psychiatric care and
24 assessment of a patient.

25 (7) Emergency egress of ETU patients and staff.

26 (e) Regulations defining an ETU that is operated by the State
27 Department of State Hospitals that are in effect prior to January
28 1, 2014, shall be inoperative until January 1, 2018. Regulations
29 adopted on and after January 1, 2014, shall not become effective
30 until January 1, 2018, and until that time, the enhanced treatment
31 units and facility are exempt from any licensing requirements.

32 SEC. 5. Section 4100 of the Welfare and Institutions Code is
33 amended to read:

34 4100. The department has jurisdiction over the following
35 programs and institutions:

36 (a) Atascadero State Hospital.

37 (b) Coalinga State Hospital.

38 (c) Metropolitan State Hospital.

39 (d) Napa State Hospital.

40 (e) Patton State Hospital.

1 (f) *State Department of State Hospitals Enhanced Treatment*
2 *Facility, subject to funding be made available in the annual Budget*
3 *Act.*

4 (g) *Vacaville Psychiatric Program of the State Department of*
5 *State Hospitals.*

6 (h) *Salinas Valley Psychiatric Program of the State Department*
7 *of State Hospitals.*

8 (i) *Stockton Psychiatric Program of the State Department of*
9 *State Hospitals.*

10 ~~SEC. 2.~~

11 *SEC. 6.* Section 4142 is added to the Welfare and Institutions
12 Code, to read:

13 4142. Commencing July 1, 2015, and subject to available
14 funding, each state hospital shall establish and maintain an
15 enhanced treatment unit as part of its facilities for the placement
16 of patients described in ~~Section 4143.~~ *Sections 4143 and 4144.*
17 The hospital administrator of each state hospital shall establish
18 procedures to provide an increased level of security for the
19 enhanced treatment unit.

20 ~~SEC. 3.~~

21 *SEC. 7.* Section 4143 is added to the Welfare and Institutions
22 Code, to read:

23 4143. (a) Subject to available funding, any case of assault by
24 a patient of a state hospital that causes injury to or illness of, or
25 has the potential to cause future illness of, a state hospital employee
26 or another patient of the state hospital rising to the level of a
27 misdemeanor or felony shall be immediately referred to the local
28 district attorney.

29 (b) If, after referral to the local district attorney, the patient is
30 found guilty of misdemeanor or felony assault, the local district
31 attorney declines prosecution, the patient is found to be
32 incompetent to stand trial, or the patient is found not guilty by
33 reason of insanity, the patient shall be placed in the enhanced
34 treatment unit of the state hospital *pursuant to Section 4144*, until
35 the patient is deemed safe to return to the regular population of
36 the hospital.

37 (c) This section shall become operative on July 1, 2015.

38 *SEC. 8.* *Section 4144 is added to the Welfare and Institutions*
39 *Code, to read:*

1 4144. (a) A state hospital psychiatrist or psychologist may
2 refer a patient to an enhanced treatment unit (ETU) for temporary
3 placement and risk assessment upon determining that the patient
4 may pose a substantial risk of inpatient aggression and the
5 patient's care and treatment may not be possible in a standard
6 security treatment environment. The referral may occur at any
7 time after the patient has been admitted to a hospital or program
8 under the jurisdiction of the department.

9 (b) Within three business days of placement in an ETU, a
10 dedicated forensic evaluator, who is not on the patient's treatment
11 team, shall complete a full clinical evaluation of the patient that
12 shall include an analysis of diagnosis, past violence, and any
13 instances of an offense, and a valid and reliable violence risk
14 assessment.

15 (c) (1) Within seven business days of placement in an ETU and
16 with 72-hour notice to the patient and patient's advocate, the
17 forensic needs assessment panel (FNAP) shall conduct a placement
18 evaluation meeting with the referring psychiatrist or psychologist,
19 the patient and patient's advocate, and the dedicated forensic
20 evaluator who performed the full clinical evaluation. A
21 determination shall be made as to whether the patient meets the
22 threshold standard for treatment in an enhanced treatment program
23 (ETP).

24 (2) (A) The threshold standard for treatment in an ETP may
25 be met if a doctor, utilizing standard forensic methodologies for
26 clinically assessing violence risk, determines that a patient poses
27 a substantial risk of inpatient aggression and the patient's care
28 and treatment cannot be provided in his or her present
29 environment.

30 (B) Factors used to determine a patient's substantial risk of
31 inpatient aggression may include, but are not limited to, an analysis
32 of past violence, delineation of static and dynamic violence risk
33 factors, and utilization of valid and reliable violence risk
34 assessment testing.

35 (3) If a patient has shown improvement during his or her
36 placement in an ETU, the FNAP may delay its decision for another
37 seven business days. The FNAP's determination of whether the
38 patient is appropriate for continued or longer term ETU placement
39 and treatment shall be based on the threshold standard for
40 treatment in an ETP as specified in paragraph (1).

1 (d) (1) After consideration of discussion and reviewed materials,
2 the FNAP shall either certify the patient for 90 days of treatment
3 in an ETP or direct that the patient be returned to a standard
4 security treatment environment in the hospital.

5 (2) After the FNAP makes a decision to provide an ETP on a
6 longer term basis and if the ETP will be provided at a hospital
7 other than the referring hospital, such as an enhanced treatment
8 facility (ETF), the transfer may take place as soon as
9 transportation may be reasonably arranged.

10 (3) The FNAP determination shall be in writing and provided
11 to the patient and patient's advocate as soon as possible, but if
12 the ETP will be provided at a state hospital other than the referring
13 hospital, then no later than prior to transfer. The determination
14 shall also be included in a quarterly report to the State Department
15 of Health Care Services.

16 (e) (1) Upon admission to an ETP, a forensic needs assessment
17 team (FNAT) psychologist who is not on the patient's treatment
18 team shall perform an in-depth clinical assessment and make a
19 treatment plan for the patient within 14 business days of placement
20 in the ETP. Formal treatment plan reviews shall occur on a
21 monthly basis, which shall include a full report on the patient's
22 behavior while in the ETP.

23 (2) An ETP patient shall receive treatment from a team of
24 psychologists, a psychiatrist, a nurse, and a psychiatric technician,
25 who shall meet as often as necessary, but no less than on a weekly
26 basis, to assess the patient's need for continued placement in an
27 ETP.

28 (f) Prior to the expiration of 90 days from the date of placement
29 in an ETP and with 72-hour notice provided to the patient's
30 advocate, the FNAP shall convene a treatment placement meeting
31 with a psychologist from the treatment team, a patient advocate,
32 the patient, and the FNAT psychologist who performed the in-depth
33 clinical assessment. The FNAP shall determine whether the patient
34 may return to a standard security treatment environment or
35 whether the patient is appropriate for continued ETP placement.
36 If after consideration of the discussion and documentation, the
37 FNAP determines that the patient requires continued ETP
38 placement, the patient shall be certified for further treatment. The
39 FNAP determination shall be in writing and provided to the
40 patient's advocate within 24 hours of the meeting. The report shall

1 also be included in a quarterly report to State Department of
2 Health Care Services.

3 (g) The FNAP shall review the patient's treatment summary
4 every 90 days after the first FNAP meeting and determine if the
5 patient requires continued ETP placement. If the FNAP determines
6 that the patient is no longer appropriate for ETP placement, the
7 FNAP may refer the patient to the seven-day step down unit or to
8 a standard security treatment environment in a state hospital. The
9 FNAP report shall also be included in a quarterly report to State
10 Department of Health Case Services.

11 (h) If a patient continues to remain in an ETP placement, prior
12 to the expiration of one year from the date of certification to an
13 ETP and with 72-hour notice provided to the patient's advocate,
14 the FNAP shall convene a treatment placement meeting with a
15 psychologist from the treatment team, a patient advocate, the
16 patient, and the FNAT psychologist who performed the in-depth
17 clinical assessment. The FNAP shall determine whether the patient
18 may return to a standard security treatment environment or
19 whether the patient is appropriate for continued ETP placement.
20 If after consideration of the discussion and documentation, the
21 FNAP determines that the patient requires continued ETP
22 placement, the patient shall be certified for further treatment for
23 an additional year. The FNAP determination shall be in writing
24 and provided to the patient's advocate within 24 hours of the
25 meeting. The report shall also be included in a quarterly report
26 to State Department of Health Care Services.

27 (i) At any point during an ETP placement, if a patient's
28 treatment team determines that the patient no longer requires
29 treatment at the ETU or ETF, a recommendation to transfer the
30 patient out of the ETU or ETF shall be made to the FNAT and
31 FNAP. After a determination that an ETP placement is no longer
32 necessary, the patient shall be transferred to a step down unit for
33 seven business days for transitioning and evaluation of the patient's
34 stability at the step down unit. After completing the seven-day step
35 down placement, the FNAT shall meet to recommend either
36 continued evaluation at the step down unit, a return to ETP
37 placement, or a transfer to a standard security treatment
38 environment in a state hospital. If the FNAT recommends that the
39 patient be transferred to a standard security treatment
40 environment, the department shall identify a state hospital and

1 appropriate placement, and transfer the patient within 30 business
2 days of the recommendation.

3 (j) The process described in this section may continue until the
4 patient is no longer appropriate for ETP placement or until the
5 patient is discharged from the state hospital.

6 (k) As used in this section, the following terms have the following
7 meanings:

8 (1) “Enhanced treatment environment” means an enhanced
9 treatment unit, an enhanced treatment facility, or a step down unit.

10 (2) “Enhanced treatment facility” or “ETF” means a state
11 hospital that is part of the enhanced treatment program designed
12 and dedicated to house and treat patients who have been assessed
13 to pose a substantial risk of inpatient aggression which cannot be
14 contained in a standard treatment program.

15 (3) “Enhanced treatment program” or “ETP” means
16 supplemental treatment provided in an acute psychiatric hospital
17 or facility under the jurisdiction of the department for patients
18 who have been assessed to pose a substantial risk of inpatient
19 aggression which cannot be contained in a standard treatment
20 program.

21 (4) “Enhanced treatment unit” or “ETU” means a unit in a
22 hospital under the jurisdiction of the department that is part of the
23 enhanced treatment program designed to house, treat, and evaluate
24 patients who have been assessed to pose a substantial risk of
25 inpatient aggression which cannot be contained in a standard
26 treatment program.

27 (5) “Forensic needs assessment panel” or “FNAP” means a
28 panel that consists of the placement hospital medical director, the
29 referring hospital medical director if the patient will be transferred,
30 and the ETF hospital medical director or their designee, who all
31 evaluate the placement of a patient into an ETP, and conduct ETP
32 placement evaluation meetings.

33 (6) “Forensic needs assessment team” or “FNAT” means a
34 panel of psychologists with expertise in forensic assessment and/or
35 violence risk assessment, each of whom are assigned an ETP case,
36 or group of cases, to conduct an in-depth violence risk assessment,
37 ensure the treatment plan encompasses the elements delineated
38 by that assessment, and follow the patient through placement in
39 the ETP.

1 (7) *“In-depth violence risk assessment” means the utilization*
2 *of standard forensic methodologies for clinically assessing the*
3 *risk of a patient posing a substantial risk of inpatient aggression.*

4 (8) *“Standard security treatment environment” means a state*
5 *hospital or facility, or a portion of a state hospital or facility, that*
6 *is not part of an enhanced treatment environment.*

7 (9) *“Step down unit” means a unit in an enhanced treatment*
8 *unit or enhanced treatment facility that is part of the enhanced*
9 *treatment program designed to help assess a patient’s readiness*
10 *to return to a standard security treatment environment.*

11 *SEC. 9. Section 7200 of the Welfare and Institutions Code is*
12 *amended to read:*

13 7200. There are in the state the following state hospitals for
14 the care, treatment, and education of the mentally disordered:

15 (a) Metropolitan State Hospital near the City of Norwalk, Los
16 Angeles County.

17 (b) Atascadero State Hospital near the City of Atascadero, San
18 Luis Obispo County.

19 (c) Napa State Hospital near the City of Napa, Napa County.

20 (d) Patton State Hospital near the City of San Bernardino, San
21 Bernardino County.

22 (e) Coalinga State Hospital near the City of Coalinga, Fresno
23 County.

24 (f) *State Department of State Hospitals Enhanced Treatment*
25 *Facility at a location to be determined by the State Department of*
26 *State Hospitals and subject to available funding.*

27 *SEC. 10. No reimbursement is required by this act pursuant*
28 *to Section 6 of Article XIII B of the California Constitution because*
29 *the only costs that may be incurred by a local agency or school*
30 *district will be incurred because this act creates a new crime or*
31 *infraction, eliminates a crime or infraction, or changes the penalty*
32 *for a crime or infraction, within the meaning of Section 17556 of*
33 *the Government Code, or changes the definition of a crime within*
34 *the meaning of Section 6 of Article XIII B of the California*
35 *Constitution.*

O