

AMENDED IN SENATE MAY 23, 2016

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 29

Introduced by Assembly Member Campos

December 1, 2014

~~An act to add Section 1708.5.5 to the Civil Code, relating to civil actions.~~ *An act to add Section 1507.16 to the Health and Safety Code, relating to care facilities.*

LEGISLATIVE COUNSEL'S DIGEST

AB 29, as amended, Campos. ~~Civil actions; defenses; unlawful sexual intercourse.~~ *Care facilities; missing minor residents.*

Existing law, the California Community Care Facilities Act, provides for the licensing and regulation of community care facilities by the State Department of Social Services. Existing law requires every community care facility that provides adult residential care or offers an adult day program to, for the purpose of addressing issues that arise when an adult resident or an adult day program participant is missing from the facility, develop and comply with an absentee notification plan for each resident or participant, and requires the plan to include a requirement that an administrator of the facility, or his or her designee, inform the resident's or participant's authorized representative when that resident or participant is missing from the facility and the circumstances in which an administrator of the facility, or his or her designee, shall notify local law enforcement when a resident or participant is missing from the facility. A violation of the provisions relating to community care facilities is a misdemeanor.

This bill would also require every community care facility that provides residential care for minors to, for the purpose of addressing issues that arise when a minor resident is missing from the facility, develop and comply with an absentee notification plan for each minor resident. The bill would require the plan to include a requirement that an administrator of the facility, or his or her designee, inform the minor’s parent or guardian when that minor is missing from the facility and include provision for notification of local law enforcement. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law prohibits a person from engaging in unlawful sexual intercourse, as defined, with a minor and prescribes punishments for unlawful sexual intercourse. Existing law makes a person who commits sexual battery, as provided, liable for specified damages. Existing law establishes the defense of consent in civil actions.~~

~~This bill would prohibit, in any civil action involving sexual battery by an adult of a minor, as defined, the defense that the minor consented to the sexual battery if the adult is in a position of trust, authority, or supervision, or acts as a caretaker, in relation to the minor. The bill would also provide that the minor’s consent does not mitigate damages in these circumstances.~~

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

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

- 1 **SECTION 1.** *Section 1507.16 is added to the Health and Safety*
- 2 *Code, to read:*
- 3 1507.16. (a) *Every community care facility that provides*
- 4 *residential care for minors shall, for the purpose of addressing*
- 5 *issues that arise when a minor resident is missing from the facility,*
- 6 *develop and comply with an absentee notification plan for each*
- 7 *minor resident. The plan shall be part of the written needs and*

1 *services plan if the minor has a plan. The plan shall include, but*
2 *not be limited to, both of the following:*

3 *(1) A requirement that an administrator of the facility, or his*
4 *or her designee, inform the minor’s parent or guardian when that*
5 *minor is missing from the facility.*

6 *(2) The circumstances under which an administrator of the*
7 *facility, or his or her designee, shall notify local law enforcement*
8 *when a minor is missing from the facility.*

9 *(b) In preparing the absentee notification plan, the facility shall*
10 *consider the status of the minor as a victim of human trafficking.*
11 *In this situation, the plan may include a requirement to notify law*
12 *enforcement immediately after the minor is missing.*

13 *SEC. 2. No reimbursement is required by this act pursuant to*
14 *Section 6 of Article XIII B of the California Constitution because*
15 *the only costs that may be incurred by a local agency or school*
16 *district will be incurred because this act creates a new crime or*
17 *infraction, eliminates a crime or infraction, or changes the penalty*
18 *for a crime or infraction, within the meaning of Section 17556 of*
19 *the Government Code, or changes the definition of a crime within*
20 *the meaning of Section 6 of Article XIII B of the California*
21 *Constitution.*

22 ~~SECTION 1. Section 1708.5.5 is added to the Civil Code, to~~
23 ~~read:~~

24 ~~1708.5.5. (a) For the purposes of this section, the following~~
25 ~~definitions shall apply:~~

26 ~~(1) “Adult” means a person who is at least 18 years of age.~~

27 ~~(2) “Minor” means a person who is under 18 years of age.~~

28 ~~(b) Notwithstanding Section 3515, in any civil action involving~~
29 ~~sexual battery, as defined in Section 1708.5, by an adult of a minor,~~
30 ~~it shall not be a defense that, nor mitigate damages if, the minor~~
31 ~~consented to the sexual battery if the adult is in a position of trust,~~
32 ~~authority, or supervision, or acts as a caretaker, in relation to the~~
33 ~~minor.~~