

Emergency Room 24-Hour Rule

This section explains the extension of the emergency room eight-hour rule for general medical emergency rooms that had been passed in 1997. LPS Designated facilities within Santa Clara County are expected to provide an assessment for a 5150 within one hour. In Santa Clara County, the following rule applies only to non-LPS designated hospitals. Effective January 1, 2008, SB 916 provides immunity to (non-LPS designated) medical emergency rooms for detaining individuals who present as danger to self, others, or are gravely disabled due to a mental disorder for up to 24 hours while emergency room staff seek a psychiatric bed for the individual. SB 916 states that hospitals and staff shall not be civilly or criminally liable for detention up to 24 hours as long as the following are met:

1. The person cannot be safely released from the hospital because, in the opinion of the treating physician and surgeon, or a clinical psychologist with medical staff privileges, clinical privileges, or professional responsibilities provided in Section 1316.5, the person, as a result of a mental disorder, presents a danger to themselves, or others, or is gravely disabled.
2. The hospital staff, treating physician and surgeon, or appropriate licensed mental health professional, have made, and documented, repeated unsuccessful efforts to find appropriate mental health treatment for the person.
3. The person is not detained beyond 24 hours.
4. There is probable cause for the detention.

If the person is detained beyond eight hours, but less than 24 hours, the following additional conditions shall be met:

- (a) A transfer for appropriate mental health treatment for the person has been delayed because of the need for continuous and ongoing care, observation, or treatment that the hospital is providing.
- (b) In the opinion of the treating physician and surgeon, or a clinical psychologist with medical staff privileges or professional responsibilities provided for in Section 1316.5, the person, as a result of a mental health condition, is still a danger to themselves, or

others, or is gravely disabled.

In addition to the conditions set forth in subdivision (a), a licensed acute psychiatric hospital, licensed professional staff of those hospitals, or any physician and surgeon, providing emergency medical services in any department of those hospitals shall not be civilly or criminally liable for the actions of a person detained up to 24 hours in those hospitals who is subject to detention pursuant to Section 5150 of the Welfare and Institutions Code after that person's release from the detention at the hospital, if all of the following conditions exist during the detention:

1. The person has not been admitted to a licensed general acute care hospital or a licensed acute psychiatric hospital for evaluation and treatment pursuant to Section 5150 of the Welfare and Institutions Code.
2. The release from the licensed general acute care hospital or the licensed acute psychiatric hospital is authorized by a physician and surgeon or a clinical psychologist with medical staff privileges or professional responsibilities who determines, based on a face-to-face examination of the person detained, that the person does not present a danger to themselves or others and is not gravely disabled. In order for this paragraph to apply to a clinical psychologist, the clinical psychologist shall have a collaborative treatment relationship with the physician and surgeon. The clinical psychologist may authorize the release of the person from the detention, but only after they has consulted with the physician and surgeon. In the event of a clinical or professional disagreement regarding the release of a person subject to the detention, the detention shall be maintained unless the hospital's medical director overrules the decision of the physician and surgeon opposing the release. Both the physician and surgeon and the clinical psychologist shall enter their findings, concerns, or objections in the person's medical record.
3. Nothing in this section shall affect the responsibility of a general acute care hospital or an acute psychiatric hospital to comply with all state laws and regulations pertaining to the use of seclusion and restraint and psychiatric medications for psychiatric patients. Persons detained under this section shall retain their legal rights regarding consent for medical treatment.
4. A person detained under this section shall be credited for the time detained, up to 24 hours, in the event they are placed on a subsequent 72-

hour hold pursuant to Section 5150 of the Welfare and Institutions Code. There are no forms or formal applications for this rule. This rule applies only to persons who are detained; voluntary patients are not held against their will, so we do not record any time of detainment.

24-Hour Rule
HEALTH AND SAFETY CODE
SECTION 1799.100-1799.112
(This is the actual text of the law)

1799.100. In order to encourage local agencies and other organizations to train people in emergency medical services, no local agency, entity of state or local government, private business or nonprofit organization included on the statewide registry that voluntarily and without expectation and receipt of compensation donates services, goods, labor, equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2 of the Government Code, or other public or private organization which sponsors, authorizes, supports, finances, or supervises the training of people, or certifies those people, excluding physicians and surgeons, registered nurses, and licensed vocational nurses, as defined, in emergency medical services, shall be liable for any civil damages alleged to result from those training programs.

1799.102. (a) No person who in good faith, and not for compensation, renders emergency medical or nonmedical care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered. This subdivision applies only to the medical, law enforcement, and emergency personnel specified in this chapter.

(b) (1) It is the intent of the Legislature to encourage other individuals to volunteer, without compensation, to assist others in need during an emergency, while ensuring that those volunteers who provide care or assistance act responsibly.

(2) Except for those persons specified in subdivision (a), no person who in good faith, and not for compensation, renders emergency medical or nonmedical care or assistance at the scene of an emergency shall be liable for civil damages resulting from any act or omission other than an act or omission constituting gross negligence or willful or wanton misconduct. The scene of an emergency shall not include emergency departments and other places where medical care is

usually offered. This subdivision shall not be construed to alter existing protections from liability for licensed medical or other personnel specified in subdivision (a) or any other law.

(c) Nothing in this section shall be construed to change any existing legal duties or obligations, nor does anything in this section in any way affect the provisions in Section 1714.5 of the Civil Code, as proposed to be amended by Senate Bill 39 of the 2009-10 Regular Session of the Legislature.

(d) The amendments to this section made by the act adding subdivisions (b) and (c) shall apply exclusively to any legal action filed on or after the effective date of that act.

1799.103. (a) An employer shall not adopt or enforce a policy prohibiting an employee from voluntarily providing emergency medical services, including, but not limited to, cardiopulmonary resuscitation, in response to a medical emergency, except as provided in subdivisions (b) and (c).

(b) Notwithstanding subdivision (a), an employer may adopt and enforce a policy authorizing employees trained in emergency services to provide those services. However, in the event of an emergency, any available employee may voluntarily provide emergency medical services if a trained and authorized employee is not immediately available or is otherwise unable or unwilling to provide emergency medical services.

(c) Notwithstanding subdivision (a), an employer may adopt and enforce a policy prohibiting an employee from performing emergency medical services, including, but not limited to, cardiopulmonary resuscitation, on a person who has expressed the desire to forgo resuscitation or other medical interventions through any legally recognized means, including, but not limited to, a do-not-resuscitate order, a Physician Orders for Life Sustaining Treatment form, an advance health care directive, or a legally recognized health care decision maker.

(d) This section does not impose any express or implied duty on an employer to train its employees regarding emergency medical services or cardiopulmonary resuscitation.

1799.104. (a) No physician or nurse, who in good faith gives emergency instructions to an EMT-II or mobile intensive care paramedic at the scene of an emergency, shall be liable for any civil damages as a result of issuing the instructions.

(b) No EMT-II or mobile intensive care paramedic rendering care within the scope of his duties who, in good faith and in a nonnegligent manner, follows the instructions of a physician or nurse shall be liable for any civil damages as a result of following such instructions.

1799.105. (a) A poison control center which (1) meets the minimum standards for designation and operation established by the authority pursuant to Section 1798.180, (2) has been designated a regional poison control center by the authority, and (3) provides information

and advice for no charge on the management of exposures to poisonous or toxic substances, shall be immune from liability in civil damages with respect to the emergency provision of that information or advice, for acts or omissions by its medical director, poison information specialist, or poison information provider as provided in subdivisions (b) and (c).

(b) Any poison information specialist or poison information provider who provides emergency information and advice on the management of exposures to poisonous or toxic substances, through, and in accordance with, protocols approved by the medical director of a poison control center specified in subdivision (a), shall only be liable in civil damages, with respect to the emergency provision of that information or advice, for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith. This subdivision shall not be construed to immunize the negligent adoption of a protocol.

(c) The medical director of a poison control center specified in subdivision (a) who provides emergency information and advice on the management of exposures to poisonous or toxic substances, where the exposure is not covered by an approved protocol, shall be liable only in civil damages, with respect to the emergency provision of that information or advice, for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith. This subdivision shall neither be construed to immunize the negligent failure to adopt adequate approved protocols nor to confer liability upon the medical director for failing to develop or approve a protocol when the development of a protocol for a specific situation is not practical or the situation could not have been reasonably foreseen.

1799.106. (a) In addition to the provisions of Section 1799.104 of this code, Section 2727.5 of the Business and Professions Code, and Section 1714.2 of the Civil Code, and in order to encourage the provision of emergency medical services by firefighters, police officers or other law enforcement officers, EMT-I, EMT-II, EMT-P, or registered nurses, a firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, EMT-P, or registered nurse who renders emergency medical services at the scene of an emergency or during an emergency air or ground ambulance transport shall only be liable in civil damages for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith. A public agency employing such a firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, EMT-P, or registered nurse shall not be liable for civil damages if the firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, EMT-P, or registered nurse is not liable.

(b) For purposes of this section, "registered nurse" means a registered nurse trained in emergency medical services and licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code.

1799.107. (a) The Legislature finds and declares that a threat to the public health and safety exists whenever there is a need for emergency services and that public entities and emergency rescue personnel should be encouraged to provide emergency services. To that end, a qualified immunity from liability shall be provided for public entities and emergency rescue personnel providing emergency services.

(b) Except as provided in Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code, neither a public entity nor emergency rescue personnel shall be liable for any injury caused by an action taken by the emergency rescue personnel acting within the scope of their employment to provide emergency services, unless the action taken was performed in bad faith or in a grossly negligent manner.

(c) For purposes of this section, it shall be presumed that the action taken when providing emergency services was performed in good faith and without gross negligence. This presumption shall be one affecting the burden of proof.

(d) For purposes of this section, "emergency rescue personnel" means any person who is an officer, employee, or member of a fire department or fire protection or firefighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of this state, or of a private fire department, whether that person is a volunteer or partly paid or fully paid, while he or she is actually engaged in providing emergency services as defined by subdivision (e).

(e) For purposes of this section, "emergency services" includes, but is not limited to, first aid and medical services, rescue procedures and transportation, or other related activities necessary to insure the health or safety of a person in imminent peril.

1799.108. Any person who has a certificate issued pursuant to this division from a certifying agency to provide prehospital emergency field care treatment at the scene of an emergency, as defined in Section 1799.102, shall be liable for civil damages only for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith.

1799.110. (a) In any action for damages involving a claim of negligence against a physician and surgeon arising out of emergency medical services provided in a general acute care hospital emergency department, the trier of fact shall consider, together with all other relevant matters, the circumstances constituting the emergency, as defined herein, and the degree of care and skill ordinarily exercised by reputable members of the physician and surgeon's profession in the same or similar locality, in like cases, and under similar emergency circumstances.

(b) For the purposes of this section, "emergency medical services" and "emergency medical care" means those medical services required for the immediate diagnosis and treatment of medical conditions

which, if not immediately diagnosed and treated, could lead to serious physical or mental disability or death.

(c) In any action for damages involving a claim of negligence against a physician and surgeon providing emergency medical coverage for a general acute care hospital emergency department, the court shall admit expert medical testimony only from physicians and surgeons who have had substantial professional experience within the last five years while assigned to provide emergency medical coverage in a general acute care hospital emergency department. For purposes of this section, "substantial professional experience" shall be determined by the custom and practice of the manner in which emergency medical coverage is provided in general acute care hospital emergency departments in the same or similar localities where the alleged negligence occurred.

1799.111. (a) Subject to subdivision (b), a licensed general acute care hospital, as defined in subdivision (a) of Section 1250, that is not a county-designated facility pursuant to Section 5150 of the Welfare and Institutions Code, a licensed acute psychiatric hospital, as defined in subdivision (b) of Section 1250, that is not a county-designated facility pursuant to Section 5150 of the Welfare and Institutions Code, licensed professional staff of those hospitals, or any physician and surgeon, providing emergency medical services in any department of those hospitals to a person at the hospital shall not be civilly or criminally liable for detaining a person if all of the following conditions exist during the detention:

(1) The person cannot be safely released from the hospital because, in the opinion of the treating physician and surgeon, or a clinical psychologist with the medical staff privileges, clinical privileges, or professional responsibilities provided in Section 1316.5, the person, as a result of a mental disorder, presents a danger to himself or herself, or others, or is gravely disabled. For purposes of this paragraph, "gravely disabled" means an inability to provide for his or her basic personal needs for food, clothing, or shelter.

(2) The hospital staff, treating physician and surgeon, or appropriate licensed mental health professional, have made, and documented, repeated unsuccessful efforts to find appropriate mental health treatment for the person.

(A) Telephone calls or other contacts required pursuant to this paragraph shall commence at the earliest possible time when the treating physician and surgeon has determined the time at which the person will be medically stable for transfer.

(B) In no case shall the contacts required pursuant to this paragraph begin after the time when the person becomes medically stable for transfer.

(3) The person is not detained beyond 24 hours.

(4) There is probable cause for the detention.

(b) If the person is detained pursuant to subdivision (a) beyond eight hours, but less than 24 hours, both of the following additional conditions shall be met:

(1) A discharge or transfer for appropriate evaluation or treatment for the person has been delayed because of the need for continuous and ongoing care, observation, or treatment that the hospital is providing.

(2) In the opinion of the treating physician and surgeon, or a clinical psychologist with the medical staff privileges or professional responsibilities provided for in Section 1316.5, the person, as a result of a mental disorder, is still a danger to himself or herself, or others, or is gravely disabled, as defined in paragraph (1) of subdivision (a).

(c) In addition to the immunities set forth in subdivision (a), a licensed general acute care hospital, as defined in subdivision (a) of Section 1250 that is not a county-designated facility pursuant to Section 5150 of the Welfare and Institutions Code, a licensed acute psychiatric hospital as defined by subdivision (b) of Section 1250 that is not a county-designated facility pursuant to Section 5150 of the Welfare and Institutions Code, licensed professional staff of those hospitals, or any physician and surgeon, providing emergency medical services in any department of those hospitals to a person at the hospital shall not be civilly or criminally liable for the actions of a person detained up to 24 hours in those hospitals who is subject to detention pursuant to subdivision (a) after that person's release from the detention at the hospital, if all of the following conditions exist during the detention:

(1) The person has not been admitted to a licensed general acute care hospital or a licensed acute psychiatric hospital for evaluation and treatment pursuant to Section 5150 of the Welfare and Institutions Code.

(2) The release from the licensed general acute care hospital or the licensed acute psychiatric hospital is authorized by a physician and surgeon or a clinical psychologist with the medical staff privileges or professional responsibilities provided for in Section 1316.5, who determines, based on a face-to-face examination of the person detained, that the person does not present a danger to himself or herself or others and is not gravely disabled, as defined in paragraph (1) of subdivision (a). In order for this paragraph to apply to a clinical psychologist, the clinical psychologist shall have a collaborative treatment relationship with the physician and surgeon. The clinical psychologist may authorize the release of the person from the detention, but only after he or she has consulted with the physician and surgeon. In the event of a clinical or professional disagreement regarding the release of a person subject to the detention, the detention shall be maintained unless the hospital's medical director overrules the decision of the physician and surgeon opposing the release. Both the physician and surgeon and the clinical psychologist shall enter their findings, concerns, or objections in the person's medical record.

(d) Nothing in this section shall affect the responsibility of a general acute care hospital or an acute psychiatric hospital to comply with all state laws and regulations pertaining to the use of seclusion and restraint and psychiatric medications for psychiatric

patients. Persons detained under this section shall retain their legal rights regarding consent for medical treatment.

(e) A person detained under this section shall be credited for the time detained, up to 24 hours, in the event he or she is placed on a subsequent 72-hour hold pursuant to Section 5150 of the Welfare and Institutions Code.

(f) The amendments to this section made by the act adding this subdivision shall not be construed to limit any existing duties for psychotherapists contained in Section 43.92 of the Civil Code.

(g) Nothing in this section is intended to expand the scope of licensure of clinical psychologists.

1799.112. (a) EMT-P employers shall report in writing to the local EMS agency medical director and the authority and provide all supporting documentation within 30 days of whenever any of the following actions are taken:

(1) An EMT-P is terminated or suspended for disciplinary cause or reason.

(2) An EMT-P resigns following notice of an impending investigation based upon evidence indicating disciplinary cause or reason.

(3) An EMT-P is removed from paramedic duties for disciplinary cause or reason following the completion of an internal investigation.

(b) The reporting requirements of subdivision (a) do not require or authorize the release of information or records of an EMT-P who is also a peace officer protected by Section 832.7 of the Penal Code.

(c) For purposes of this section, "disciplinary cause or reason" means only an action that is substantially related to the qualifications, functions, and duties of a paramedic and is considered evidence of a threat to the public health and safety as identified in subdivision (c) of Section 1798.200.

(d) Pursuant to subdivision (i) of Section 1798.24 of the Civil Code, upon notification to the paramedic, the authority may share the results of its investigation into a paramedic's misconduct with the paramedic's employer, prospective employer when requested in writing as part of a pre-employment background check, and the local EMS agency.

(e) The information reported or disclosed in this section shall be deemed in the nature of an investigative communication and is exempt from disclosure as a public record by subdivision (f) of Section 6254 of the Government Code.

(f) A paramedic applicant or licensee to whom the information pertains may view the contents, as set forth in subdivision (a) of Section 1798.24 of the Civil Code, of a closed investigation file upon request during the regular business hours of the authority