STATE OF CALIFORNIA--HEALTH AND WELFARE AGENCY PETE WILSON, GOVERNOR

DEPARTMENT OF MENTAL HEALTH
1600 - 9TH STREET
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November 19, 1997

DMH INFORMATION NOTICE No.: 97- 21

TO: LOCAL MENTAL HEALTH DIRECTORS
LOCAL MENTAL HEALTH PROGRAM CHIEFS
LOCAL MENTAL HEALTH ADMINISTRATORS
COUNTY ADMINISTRATIVE OFFICERS
CHAIRPERSONS, MENTAL HEALTH ADVISORY BOARDS
EXECUTIVE DIRECTORS OF ATASCADERO, METROPOLITAN, NAPA, AND PATTON STATE HOSPITALS, AND DMH PSYCHIATRIC PROGRAM - VACAVILLE

SUBJECT: NEW LEGISLATION REGARDING CRIMES COMMITTED BY STAFF OF CERTAIN HEALTH FACILITIES

EXPIRES: Retain Until Rescinded

REFERENCE: Provides Updated Information on Legislative Change

Assembly Bill 685 (Chapter 209, Statutes of 1997) was approved by the Governor on August 4, 1997 and becomes effective January 1, 1998. This legislation makes it a misdemeanor for an employee of certain health facilities to engage in sexual activity with a patient who is involuntarily confined in that facility. If the person was previously convicted of a violation of this section, they shall, upon a subsequent violation, be guilty of a felony.

The health facilities identified in the legislation include the following types of facilities: Health and Safety Code, Section 1250, subdivisions (b) Acute psychiatric hospital; (e) Intermediate care facility/developmentally disabled habilitative; (g) Intermediate care facility/developmentally disabled; (h) Intermediate care facility developmentally disabled - nursing; subparagraph (c) of paragraph (2) of subdivision (C) Services for persons who are catastrophically and severely disabled; and (j) (1) Correctional treatment center.

"Sexual activity" is defined in this legislation as follows: sexual intercourse, sodomy, oral copulation, penetration of the genital or anal openings of another person by a foreign object, substance, instrument or device, for the purpose of sexual arousal, gratification, or abuse. Consent by a confined person to sexual activity is forbidden and is not a defense to a criminal prosecution for violation of this section. This section does not apply to sexual activity between consenting adults that occurs during an overnight conjugal visit that takes place pursuant to a court order or with the written approval of an authorized representative of the public entity that operates or contracts for the operation of the detention facility where the conjugal visit takes place.

This sexual activity is a type of physical abuse that is covered under the Elder and Dependent Adult Abuse Law as specified in Article 2 (commencing with Section 15610) of Chapter 11, Part 3 of Division 9 of the Welfare & Institutions Code. The Elder and Dependent Adult Abuse Law has mandatory reporting of abuse to local law enforcement agencies. For more information about Elder and Dependent Adult Abuse Law, refer to DMH Information No.: 95-05.

STATE HOSPITALS

Reporting requirements shall follow the same procedures that have been established for reporting cases of elder and dependent adult abuse. Refer to Special Order No.: 701 Reporting of Elder and Dependent Adult Abuse. Reporting of suspected cases of abuse that occur in state hospitals shall be made and directed to designated investigators of state mental hospitals. State hospitals staff shall continue to report through normal hospital channels and use the current format of documenting incidents.

Questions concerning this letter may be directed to Dennis Supinger, Office of Human Rights, at (916) 654-2745 or to Carol Cook, Hospital Operations, at (916) 654-2651.

Sincerely,

STEPHEN W. MAYBERG, Ph.D.
Director

Enclosures

c: California Mental Health Planning Council
Chief, Technical Assistance and Training

Assembly Bill No. 685

CHAPTER 209

An act to amend Section 289.6 of the Penal Code, relating to crimes.

[Approved by Governor August 4, 1997. Filed with Secretary of State August 4, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 685, Wayne. Crimes: detention facilities.

Under existing law, an employee or officer of a public entity or an employee, officer, or agent of a private person or entity that provides a detention facility or staff for a detention facility under contract with a public entity, who engages in sexual activity with a consenting adult who is confined in a detention facility, as defined, is guilty of a misdemeanor. A second violation of that provision is a felony.

This bill would add to the definition of "detention facility," for purposes of that provision, a health facility, as defined, in which the victim has been detained involuntarily. Because the bill would increase the scope of a 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.

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

SECTION 1. Section 289.6 of the Penal Code is amended to read:

289.6. (a) An employee or officer of a public entity, or an employee, officer, or agent of a private person or entity that provides a detention facility or staff for a detention facility under contract with a public entity, who engages in sexual activity with a consenting adult who is confined in a detention facility is guilty of a public offense.

(b) As used in this section, the term "public entity" means the state, a city, a county, a city and county, a joint county jail district, or any entity created as a result of a joint powers agreement between two or more public entities.

(c) As used in this section, the term "detention facility" means:

(1) A prison, jail, camp, or other correctional facility used for the confinement of adults or both adults and minors.

(2) A building or facility used for the confinement of adults or adults and minors pursuant to a contract with a public entity.

(3) A room that is used for holding persons for interviews, interrogations, or investigations and that is separate from a jail or located in the administrative area of a law enforcement facility.

(4) A vehicle used to transport confined persons during their period of confinement.

(5) A court holding facility located within or adjacent to a court building that is used for the confinement of persons for the purpose of court appearances.

(6) A health facility, as defined in subdivisions (b), (e), (g), (h), (j), and subparagraph (C) of paragraph (2) of subdivision (i) of Section 1250 of the Health and Safety Code, in which the victim has been confined involuntarily.

(d) As used in this section, "sexual activity" means:

(1) Sexual intercourse.

(2) Sodomy, as defined in subdivision (a) of Section 286.

(3) Oral copulation, as defined in subdivision (a) of Section 288a.

(4) Penetration, however slight, of the genital or anal openings of another person by a foreign object, substance, instrument, or device, for the purpose of sexual arousal, gratification, or abuse.

(e) Consent by a confined person to sexual activity proscribed by this section is not a defense to a criminal prosecution for violation of this section.

(f) This section does not apply to sexual activity between consenting adults that occurs during an overnight conjugal visit that takes place pursuant to a court order or with the written approval of an authorized representative of the public entity that operates or contracts for the operation of the detention facility where the conjugal visit takes place.

(g) Any violation of this section is a misdemeanor.

(h) Any person previously convicted of a violation of this section shall, upon a subsequent violation, be guilty of a felony.

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

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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