

ASSEMBLY BILL

No. 685

Introduced by Assembly Member Wayne

February 26, 1997

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

LEGISLATIVE COUNSEL'S DIGEST

AB 685, as introduced, 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. The bill also would increase the punishment for the first violation of that provision to a misdemeanor or felony. Because the bill would increase the scope of a crime and would increase the penalty for 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.

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

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

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

3 289.6. (a) An employee or officer of a public entity,
4 or an employee, officer, or agent of a private person or
5 entity that provides a detention facility or staff for a
6 detention facility under contract with a public entity,
7 who engages in sexual activity with a consenting adult
8 who is confined in a detention facility is guilty of a public
9 offense.

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

15 (c) As used in this section, the term “detention
16 facility” means:

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

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

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

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

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

32 (6) A health facility, as defined in subdivisions (b), (e),
33 (g), (h), (j), and subparagraph (C) of paragraph (2) of



1 *subdivision (i) of Section 1250 of the Health and Safety*
2 *Code.*

3 (d) As used in this section, “sexual activity” means:

4 (1) Sexual intercourse.

5 (2) Sodomy, as defined in subdivision (a) of Section
6 286.

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

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

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

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

23 (g) Any violation of this section ~~shall constitute a~~
24 ~~misdemeanor~~ *is punishable by imprisonment in a county*
25 *jail or in the state prison.*

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

29 SEC. 2. No reimbursement is required by this act
30 pursuant to Section 6 of Article XIII B of the California
31 Constitution because the only costs that may be incurred
32 by a local agency or school district will be incurred
33 because this act creates a new crime or infraction,
34 eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section
36 17556 of the Government Code, or changes the definition
37 of a crime within the meaning of Section 6 of Article
38 XIII B of the California Constitution.

39 Notwithstanding Section 17580 of the Government
40 Code, unless otherwise specified, the provisions of this act



1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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