



C A L I F O R N I A D E P A R T M E N T O F

Mental Health

State of California

Pete Wilson
Governor

Health and Welfare Agency

September 30, 1998

DMH INFORMATION NOTICE No.: 98-15

TO: LOCAL MENTAL HEALTH DIRECTOR
LOCAL MENTAL HEALTH PROGRAM CHIEFS
LOCAL MENTAL HEALTH ADMINISTRATORS
CHAIRPERSONS. LOCAL MENTAL HEALTH BOARDS

SUBJECT: AMMENDMENT TO LEGISLATION ON DISCLOSURE
OF RECORDS TO LAW ENFORCMENT OFFICERS.

REFERENCE: Welfare and Institutions Code Section 5328(u)(1)

EXPIRES: Retain Until Rescinded

This notice is to provide information regarding amended legislation that defines the circumstances under which disclosure is made available to a law enforcement officer as to whether a person is presently confined in a facility.

Assembly Bill 302 (Chapter 148, Statutes of **1998**) adds to Section 5328 of the Welfare and Institutions Code the requirement to disclose information to a law enforcement officer who is attempting to locate a person and who personally lodges with certain types of health or mental health facilities a warrant of arrest or an extract of such a warrant showing that the person sought is wanted for a violent or serious felony, as defined. This bill limits this disclosure to whether the person is presently confined in a facility. A copy of this chaptered legislation is attached for your information.

This legislation applies to facilities defined as: state hospitals, general acute care hospitals (solely with regard to information pertaining to a mentally disordered person covered by Section 5328), acute psychiatric hospitals, psychiatric health facilities, mental health rehabilitation centers and skilled nursing facilities with a special treatment program for chronically mentally disordered patients.

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If you should have any questions regarding this law, please contact
Angela M. Lazarow, Chief, Office of Human Rights at (916) 654-2327.



STEPHEN W. MAYBERG, Ph.D.
Director

Attachment

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

Assembly Bill No. 302

CHAPTER 148

An act to amend Section **5328** of the Welfare and Institutions Code, relating to human services.

[Approved by Governor July 13, 1998. Filed with
Secretary of State July 13, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 302, Runner. Mental health: disclosure of records: law enforcement.

Existing law prohibits the disclosure of all information and records obtained in the course of providing intake, assessment, and services to persons with developmental disabilities, or in the course of providing certain mental health services to either voluntary or involuntary recipients of services. However, existing law requires the disclosure of this information in certain specified circumstances.

This bill would require disclosure of information to a law enforcement officer who is attempting to locate a person and who personally **lodges with** any of **certain** types of health or mental health facilities a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a violent or serious felony, as defined. The bill would limit this disclosure to whether the person is presently confined in a facility.

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

SECTION 1. Section **5328** of the Welfare and Institutions Code is amended to read:

5326. All information and records obtained in the course of **providing** services under Division 4 (commencing, **with** Section **4000**), Division 4.1 (commencing with Section **4400**), Division 4.5 (commencing with Section **4500**), Division 5 (commencing with Section **5000**), Division 6 (commencing with Section **6000**), or Division 7 (commencing with Section **7100**), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained, in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or **her** **guardian** or conservator shall be obtained before information or

records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

(b) When the patient, with the approval of the physician, licensed psychologist, or social worker with a master's degree in social work, who is in charge of the patient, designates persons to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him or her in confidence by members of a patient's family.

(c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(d) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, guardian ad litem, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him or her in confidence by members of a patient's family.

(e) For research, provided that the Director of Mental Health or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

D a t e

As a condition of doing research concerning persons who, have received services from _____ (fill in the facility, agency or person), I, _____, agree to obtain the prior informed consent of such persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

- (f) To the courts, as necessary to the administration of justice.
- (g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.
- (h) To the Committee on Senate Rules or the Committee on Assembly Rules for the purposes of legislative investigation authorized by the committee.
- (i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.
- (j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.
- (k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation; The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.
- (l) Between persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d) of Section 16951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11, (commencing with Section 16956) of Part 6 of Division 9.
- (m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(n) To a committee established in compliance with Sections 4070 and 5624.

(o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.

(p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.

(q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 341.5 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, "qualified professional persons" means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Services under Section 309 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this subdivision after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.

(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, "psychotherapist" means anyone so defined within Section 1010 of the Evidence Code.

(s) To persons serving on an interagency case management council established in compliance with Section 5606.6 to the extent necessary to perform its duties. This council shall attempt to obtain the consent of the client. If this consent is not given by the client, the council shall justify in the client's chart why these records are necessary for the work of the council.

(t) (1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(2) For purposes of this subdivision, "designated officer" and "emergency response employee" have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

(u) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(2) For purposes of paragraph (1), a facility means all of the following:

(A) A state hospital, as defined in Section 4001.

(B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.

(C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.

(E) A mental health rehabilitation center, as described in Section 5675.

(F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.