STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814

December 13, 1995

ALL-COUNTY INFO. NOTICE NO. I-59-95

TO: ALL-COUNTY WELFARE DIRECTORS

REASON FOR THIS TRANSMITTAL

[X] State Law Change
[ ] Federal Law or Regulation Change
[ ] Court Order or Settlement Agreement
[ ] Clarification Requested by One or More Counties
[ ] Initiated by CDSS

SUBJECT: SB 1161: OFFENSES AGAINST THE ELDERLY AND DEPENDENT ADULTS

This All-County Information Notice identifies the policies and procedures to be followed for the implementation of SB 1161, (Leslie). This bill amends Section 288 of the Penal Code, relating to crimes against the elderly and dependent adults.

Existing law provides that a person who commits a specified lewd or lascivious act upon a child under the age of 14 years, with a specified sexual intent, by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for 3, 6, or 8 years. Existing law further provides that if the act is committed with a specified sexual intent and the victim is a child of 14 or 15 years of age, and the defendant is at least 10 years older than the victim, the defendant is guilty of a public offense and shall be punished by imprisonment in the state prison for one, 2, or 3 years, or by imprisonment in a county jail for not more than one year.

This bill would make these provisions applicable to a caretaker who commits a sexual act upon a dependent adult. "Caretaker" includes any owners, operators, administrators, employees, agents, independent contractors, and volunteers working at specified facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by this provision.

Because this bill would create a new crime, it 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.

Please contact Robert A. Barton, Chief, Adult Services management Branch at (916) 229-4583 if you have any questions regarding this matter.

Robert A Barton for

CAROL R. WIDEMON
Deputy Director
Adult Services Division

Attachment

of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) (1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent adult by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(c) (1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and the defendant is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent adult, with the intent described in subdivision (a), is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.

(d) In any arrest or prosecution under this section or Section 288.5, the peace officer, district attorney, and the court shall consider the needs of the child victim and shall do whatever is necessary, within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent adult victim resulting from participation in the court process.

(e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed ten thousand dollars ($10,000). In setting the amount of the fine, the court shall consider any relevant factors, including, but not limited to, the seriousness and gravity of the offense, the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

If the court orders a fine imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

(f) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:

(1) "Caretaker" means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent adults:

(A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(B) Clinics.

(C) Home health agencies.

(D) Adult day health care centers.

(E) Secondary schools that serve dependent adults ages 18 to 22 years and postsecondary educational institutions that serve dependent adults or elders.

(F) Sheltered workshops.

(G) Camps.

(H) Community care facilities, as defined by Section 1402 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(I) Respite care facilities.

(J) Foster homes.

(K) Regional centers for persons with developmental disabilities.

(L) A home health agency licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

(M) An agency that supplies in-home supportive services.

(N) Board and care facilities.

(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent adults, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.

(P) Private residences.

(2) "Board and care facilities" means licensed or unlicensed facilities that provide assistance with one or more of the following activities:

(A) Bathing.

(B) Dressing.

(C) Grooming.

(D) Medication storage.

(E) Medical dispensation.

(F) Money management.

(3) "Dependent adult" means any person 18 years of age or older who has a mental disability or disorder that restricts his or her ability

to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have developmental disabilities, persons whose mental abilities have significantly diminished because of age.

(g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).

(h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or who is in an equivalent domestic relationship with, the dependent adult under care.

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.

O

Senate Bill No. 1161

CHAPTER 890

An act to amend Section 288 of the Penal Code, relating to crimes against the elderly and dependent adults.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1161, Leslie. Offenses against dependent adults.

(1) Existing law provides that a person who commits specified lewd or lascivious acts upon a child under the age of 14 years, with a specified sexual intent, by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for 3, 6, or 8 years.

Existing law further provides that a person who commits specified lewd or lascivious acts, if the victim is a child of 14 or 15 years of age, and the defendant is at least 10 years older than the child, with a specified sexual intent, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, 2, or 3 years, or by imprisonment in a county jail for not more than one year.

This bill would make these provisions applicable to a caretaker who commits these acts upon a dependent adult and, among other things, would apply this provision to the owners, operators, administrators, employees, agents, independent contractors, and volunteers working at specified facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by this provision. Because this bill would create a new crime, it would impose a state-mandated local program.

(2) 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 288 of the Penal Code is amended to read:

288. (a) Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent