52 12/13/68

Memorandum 69-11

Subject: Study 52 - Sovereign Immunity (Prisoners and Mental Patients)

Prisoners

You will recall that at the November meeting, the staff was directed to revise Section 844.6 of the Government Code to make a public entity liable for the willful misconduct or gross negligence of its employees acting within the scope of their employment and resulting in injury to prisoners. A draft statute that includes a provision implementing this direction is attached to this memorandum as Exhibit I.

In support of the revised section, it might be noted that its limited extension of public entity liability could be considered at least a step in the right direction. Professor Van Alstyne, in his sovereign immunity study prepared for the Commission, stated his opinion that sound principles in this general area would grant immunity to the law enforcement officer, so far as he acts in good faith, and impose liability upon the employing entity with a right of indemnity over against the officer where the latter was motivated by bad faith, actual malice or willful intent to cause injury. This rule of entity liability would, of course, be subject to certain specific immunities predicated generally on the basic discretionary immunity. It was his belief that holding the individual officer liable is seldom an adequate protection to the public, for the most effective deterrents are likely to take the form of internal disciplinary measures and supervisory controls. A salutary incentive to the establishment of such administrative precaution by public entities would be the application to them of the doctrine of

respondeat superior. The pre-Muskopf rules (which were preserved and exist now), he felt were contrary to sound policy in two further respects. First, they impose personal liability on the officer and thus may exert a dampening effect upon the vigor with which he seeks to enforce the law. Second, they relieve the public entity of liability, thereby depriving the plaintiff of an effective remedy for what may be a most grievous wrong. See 5 Cal. L. Revision Comm'n Reports 417-418 (1963). The Commission apparently concurred in these thoughts and its recommendation incorporated the principles suggested. See 4 Cal. L. Revision Comm'n Reports 826-827, 860-863 (1963). Unfortunately, the statutory scheme insofar as it applied to prisoners was altered by the Legislature, completely reversing the principles recommended by the Commission and applicable generally in actions against public entities and employees. Sections 844 and 844.6 were added. The former defined "prisoner"; the latter gave public entities a blanket immunity from liability for injuries to prisoners, but expressly preserved public employee liability.

As indicated above, the draft statute attached hereto moves in the direction of greater entity liability. Left in a sort of limbo is entity liability for dangerous conditions. Arguably, where the condition results from the gross negligence of a public employee or where the condition was so obvious and so dangerous that some employee must have been grossly negligent in failing to observe and repair it, there will be entity liability. However, the thrust of the section is to create liability where there is an identifiable and culpable employee acting within the scope of his employment who has injured a prisoner. In such situations, if the employee is grossly negligent (or his conduct can be

characterized . .. misconduct) his employer (the entity) will be liable. The staff is particularly concerned with the use of the term "gross negligence."

As Professor Prosser notes:

> Although the idea of "degrees of negligence" has not been without its advocates, it has been condemned by most writers and . . . rejected at common law by nearly all courts, as a distinction "vague and impracticable in its nature, unfounded in principle," which adds only difficulty and confusion to the already nebulous and uncertain standards which must be given to the jury. The prevailing view is that there are no "degrees" of care or negligence as a matter of law; there are only different amounts of care as a matter of fact; and "gross" negligence is merely the same thing as ordinary negligence, "with the addition . . . of a vituperative epithet." This much quoted phrase may be a bit unfair, since it is not difficult to understand that there are such things as major or m' or departures from reasonable conduct; but the extreme d.. ficulty of classification, because of the almost complete impossibility of drawing any satisfactory lines of demarcation, together with the unhappy history, fully justifies the rejection. [Prosser, Torts 185-186 (3d ed. 1964).]

This view has been echoed by our own Court of Appeal.

> The term "gross negligence" is incapable of precise definition and may in some cases lead to unsatisfactory results, even to the extent of nullifying this limitation of liability contained in the [automobile guest] statute. How much care will, in a given case, relieve a party from the imputation of gross negligence or what omission will amount to the charge, is necessarily a question of fact, depending upon a great variety of circumstances which the law cannot exactly define. Generally speaking, the degree of care required under any given circumstances is a question of fact for the court or jury, and not a question of law. [Meigan v. Baker, 119 Cal. App. 582, 585, 6 P.2d 1015 (1932).]

It seems the typical kind of case that would arise under the draft statute is that where a person being held in custody is roughly handled and injured by a police officer. Positing the fact that unreasonable force was used and the officer was acting within the scope of his employment consider the difficult questions presented the trier of fact of determining who is liable. Under the suggested scheme, (1) only the

officer is liable for simple negligence, (2) both the officer and the entity are liable for the officer's willful misconduct or gross negligence, but the officer has a right of indemnification against the entity, and (3) where there is willful misconduct and the officer acted because of "actual fraud, corruption, or actual malice," both the officer and entity are liable, but the entity may seek indemnification from the officer.

Consider now that "negligence" is defined as:

> the doing of an act which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, actuated by those considerations which ordinarily regulate the conduct of human affairs. It is the failure to use ordinary care in the management of one's property or person. . . . [1 California Jury Instructions Civil (BAJI) No. 101 (Revised) (4th rev. ed. 1956, cum. supp. 1967).]

and that "gross negligence" has been variously defined in California as:

> "the want of slight diligence", as "an entire failure to exercise care, or the exercise of so slight a degree of care as to justify the belief that there was an indifference to the things and welfare of others", and as "that want of care which would raise a presumption of the conscious indifference to consequences". [Krause v. Rarity, 210 Cal. 644, 655, 293 Pac. 62, 66 (1930).]

and that "willful misconduct" is defined as:

> intentional, wrongful conduct, done either with knowledge [which may be inferred] that serious injury . . . probably will result, or with a wanton and reckless disregard of the possible results-- [2 California Jury Instructions Civil(BAJI) No. 209-I (4th rev. ed. 1956).]

and it seems to the staff at least that the trier of fact, particularly an unsophisticated jury, will in many cases simply be unable to do anything but attempt "to do justice." (It goes practically without saying that even the most inept will be able to get past the pleading stage, and very, very few cases will be subject to decision as a matter of law.)

To leave the law in such a posture, the staff believes would be unsatisfactory. Far preferable would be the repeal of Sections 844 and 844.6. To do this would simply provide entity liability to supplement existing employee liability. Insofar as entities now make a practice of paying judgments rendered against their employees, it might be suggested that such action, would not only be sound in policy and principle, but also economically feasible and practicable. If the Commission does not wish to initiate this step, it seems the lesser of evils, would be to have the statute as it presently appears, rather than incorporate the concepts of willful misconduct and gross negligence.

If the Commission does approve the draft statute it should also consider the issues whether a public employee's liability should be limited to and coextensive with that of his employer and whether the prisoner and mental patient sections should be made substantively similar in this regard.

The remainder of the draft statute relating to prisoners merely reflects policy decisions already made by the Commission and has already been approved.

Mental Patients

The attached draft statute also includes provisions relating to mental patients. This draft also has been revised and in its present form makes no significant change in existing law. It attempts simply to clarify existing language and to eliminate inconsistencies caused by the revision of the Welfare and Institutions Code.

However, here again the blanket entity immunity from liability for injuries to mental patients resulted from legislative change. The Commission's recommendation in 1963 did not contain Section 854.8. But for considerations of expediency, it seems difficult to rationalize public employee liability with public entity immunity. With this in mind and inasmuch as these sections must be revised anyway, the Commission may wish to consider (1) the possibility of repealing the blanket immunity altogether; (2) requiring the entity to indemnify its employees in any case where the employee was acting within the scope of his employment and not guilty of "actual fraud, corruption, or actual malice"; or (3) exceptions to the rule of immunity, as for example, the exclusion of patients confined in the state hospitals for the mentally retarded. To assist in making these determinations, at the direction of the Commission, the staff has invited Barbara Calais, Counsel of the Department of Mental Hygiene, to attend our January meeting and present her views of the existing statute and factors affecting potential changes in this statute.

Respectfully submitted,

Jack I. Horton
Junior Counsel

EXHIBIT I

Section 1. Section 844.6 of the Government Code is amended to read:

844.6. (a) Notwithstanding any other provisions of ~~law~~ this part , except as provided in ~~subdivisions (b), (c), and (d)~~ of this section and in Sections 814, 814.2, 845.4, and 845.6 , a public entity is not liable for:

(1) An injury proximately caused by any prisoner.

(2) An injury to any prisoner.

(b) Nothing in this section affects the liability of a public entity under Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code.

(c) Nothing in this section prevents a person, other than a prisoner, from recovering from the public entity for an injury resulting from the dangerous condition of public property under Chapter 2 (commencing with Section 830) of this part.

(d) Nothing in this section affects the liability of a public entity for injury proximately caused by the willful misconduct or gross negligence of an employee of the public entity and arising out of an act or omission occurring within the scope of his employement.

~~(d)~~ (e) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission. The public entity may but is not required to pay any judgment, compromise or settlement, or may but is not required to indemnify any public employee, in any case where the public entity is immune from liability under this section; except that the public entity shall pay, as provided in Article 4 (commencing with Section 825) of Chapter 1 of this part, any judgment on a claim against a public employee ~~licensed in~~ who is lawfully engaged in the practice of one of the healing arts under ~~Division 2 (commencing with Section 500) of the Business and Professions Code~~ any law of this state for malpractice arising from an act or omission in the scope of his employment, and shall pay any compromise or settlement of a claim or action based on such malpractice to which the public entity has agreed.

Comment. Subdivision (a) of Section 844.6 is amended to make clear that the limited liability imposed by Section 845.4 (interference with right of prisoner to seek judicial review of legality of confinement) and Section 845.6 (failure to summon medical care for prisoner in need of immediate medical care) also constitute exceptions to the general principle of nonliability embodied in Section 844.6. It has been held that the liability imposed on a public entity by Section 845.6 exists notwithstanding the broad immunity provided by Section 844.6. Apelian v. County of Los Angeles, 266 Adv. Cal. App. 595, 72 Cal. Rptr. ___ (1968); Hart v. County of Orange, 254 Cal. App.2d 302, 62 Cal. Rptr. 73 (1967); Sanders v. County of Yuba, 247 Cal. App.2d 748, 55 Cal. Rptr. 852 (1967). The reasoning that led the courts to so hold would indicate that Section 845.4 also creates an exception to the immunity granted by Section 844.6, but no case in point has been found.

The amendment to subdivision (a) is also designed to eliminate uncertainty. As originally enacted, this subdivision appears to preclude liability (except as provided in this section) elsewhere provided by any law. Taken literally, this would impliedly repeal, at least in some cases, Penal Code Sections 4900-4906 (liability up to $5,000 for erroneous conviction). Moreover, as a specific provision, it might even be construed to prevail over the general language of Government Code Sections 814 and 814.2, which preserve nonpecuniary liability and liability based on contract and workmen's compensation.

Implied repeal of these liability provisions, however, does not appear to have been intended. The problem is solved by limiting the "notwithstanding" clause to "this part" and expressly excepting Sections 814 and 814.2. The exception for subdivisions (b), (c), and (d) has been deleted as unnecessary.

Subdivision (d) of Section 844.6 imposes liability on a public entity for injury proximately caused by the willful misconduct or gross negligence of an employee of the public entity and arising out of an act or omission occuring within the scope of his employment. Such liability will insure that an injured party will be compensated in those cases covered by the section, where previously the claimant was compelled to look to the frequently uninsured and less than solvent employee for his recovery. This subdivision in no way affects, however, the right of the entity to seek indemnification from its employee where the latter "acted or failed to act because of actual fraud, corruption or actual malice." See Government Code Section 825.6. The concept of "willful misconduct" is, of course, a familiar one to California courts and lawyers. See 2 California Jury Instructions Civil (BAJI) (4th rev. ed. 1956). Similarly, the term "gross negligence" and its counterpart--the failure to exercise slight care--have a lengthy statutory history. See Civil Code Section 1846; former Vehicle Code Section 141 3/4, added Cal. Stats. 1929, Ch. 787, § 1, p. 1580. See also Kastel v. Stieber, 215 Cal. 37, 8 P.2d 474 (1932); Krause v. Rarity, 210 Cal. 644, 655, 293 Pac. 62, 66 (1930).

The amendment to subdivision (e) expands the mandatory indemnification requirement in malpractice cases to additional medical personnel to whom the same rationale applies. The section, as originally enacted, was unduly restrictive since it referred only to medical personnel who were "licensed" (thus excluding, under a possible narrow interpretation, physicians and surgeons who are "certificated" rather than licensed, as well as "registered" opticians, physical therapists, and pharmacists) under the Business and Professions Code (thus excluding other laws, such as the uncodified Osteopathic Act). In addition, the insistence on licensing precluded application of subdivision (e) to medical personnel lawfully practicing without a California license. E.g., Bus. & Prof. Code §§ 1626(c)(professors of dentistry), 2137.1 (temporary medical staff in state institution), 2147 (medical students), 2147.5 (uncertified interns and residents).

Sec. 2. Section 845.4 of the Government Code is amended to read:

845.4. Neither a public entity nor a public employee acting within the scope of his employment is liable for interfering with the right of a prisoner to obtain a judicial determination or review of the legality of his confinement; but a public employee, and the public entity where the employee is acting within the scope of his employment, is liable for injury proximately caused by the employee's intentional and unjustifiable interference with such right, but no cause of action for such injury ~~may be commenced~~ shall be deemed to accrue until it has first been determined that the confinement was illegal.

Comment. Section 845.4 is amended to refer to the time of the accrual of the cause of action. This amendment clarifies the relationship of this section to the claim statute. As originally enacted, the statute of limitations might have expired before illegality of the imprisonment was determined--a determination that must be made before the action may be commenced.

Sec. 3. Section 845.6 of the Government Code is amended to read:

845.6. Neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but, except as otherwise provided by Sections 855.8 and 856, a public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care. Nothing in this section exonerates a public employee ~~licensed to~~ who is lawfully engaged in the practice of one of the healing arts under ~~Division 2 (commencing with Section 500) of the Business and Professions Code~~ any law of this state from liability for injury proximately caused by malpractice or exonerates the public entity from ~~liability for injury proximately caused by such malpractice~~ its obligation to pay any judgment, compromise or settlement that it is required to pay under subdivision (d) of Section 844.6 .

Comment. Section 845.6 is amended to expand the group of public employees who are referred to as potentially liable for medical malpractice to include all types of medical personnel, not merely those who are "licensed" under the Business and Professions Code. This conforms Section 845.6 to amended Section 844.6. The amendment also clarifies the relationship of Section 845.6 and subdivision (d) of Section 844.6.

Sec. 4. Section 846 of the Government Code is amended to read:

846. Neither a public entity nor a public employee is liable for injury caused by the failure to make an arrest or by the failure to retain an arrested person in custody. "Failure to retain" includes, but is not limited to, the escape or attempted escape of an arrested person and the release of an arrested person from custody.

Comment. Section 846 is amended to add the second sentence which codifies existing law and makes clear that "failure to retain" includes not only discretionary release of an arrested person but also negligent failure to retain an arrested person in custody. See Ne Casek v. City of Los Angeles, 233 Cal. App.2d 131, 43 Cal. Rptr. 294 (1965)(city not liable to pedestrian injured by escaping arrestee).

Sec. 5. Section 854.2 of the Government Code is amended to read:

854.2 As used in this chapter, "mental institution" means any ~~facility-for-the-care-or-treatment-of-persons committed-for-mental-illness-or-addiction~~ state hospital for the care and treatment of the mentally disordered or the mentally retarded, the California Rehabilitation Center referred to in Section 3300 of the Welfare and Institutions Code, or any county psychiatric hospital .

Comment. Section 854.2 is amended to specify more precisely the institutions that are embraced within the definition. Formerly, the definition included only facilities "for the care or treatment of persons committed for mental illness or addiction." The amendment makes clear that the designated institutions are "mental institutions" even though they are used primarily for persons voluntarily admitted or involuntarily detained (but not "committed") for observation and diagnosis or for treatment. See, e.g., Welf. & Inst. Code §§ 703 (90-day court-ordered observation and treatment of minors appearing to be mentally ill), 705 (temporary holding of minor in psychopathic ward pending hearing), 5206 (court ordered evaluation for mentally disordered persons), 5304 (90-day court-ordered involuntary treatment of imminently dangerous persons), 6512 (detention of mentally retarded juvenile pending committment hearings).

Section 7200 of the Welfare and Institutions Code lists the state hospitals for the care and treatment of the mentally disordered and Section 7500 of the Welfare and Institutions Code lists the state hospitals for the care and treatment of the mentally

retarded.

The principal purpose of the California Rehabilitiation Center, established by Section 3300 of the Welfare and Institutions Code, is "the receiving, control, confinement, employment, education, treatment and rehabilitation of persons under the custody of the Department of Corrections or any agency thereof who are addicted to the use of narcotics or are in imminent danger of becoming so addicted." Welf. & Inst. Code § 3301.

"County psychiatric hospital" is defined in Section 854.3 of the Government Code. See also Goff v. County of Los Angeles, 254 Cal. App.2d 45, 61 Cal. Rptr. 840 (1967)(county psychiatric unit of county hospital as "mental institution").

Sec. 6. Section 854.3 is added to the Government Code, to read:

854.3. As used in this chapter, "county psychiatric hospital" means the hospital, ward, or facility provided by the county pursuant to the provisions of Section 7100 of the Welfare and Institutions Code.

Comment. The term "county psychiatric hospital" is defined to include the county facilities for the detention, care, and treatment of persons who are or are alleged to be mentally disordered or mentally retarded. See Welf. & Inst. Code § 7100. The definition takes the same form as in other statutes. See, e.g., Welf. & Inst. Code §§ 6003, 7101.

Sec. 7. Section 854.4 of the Government Code is amended to read:

854.4. As used in this chapter, "mental illness or addiction" means ~~mental illness, mental disorder bordering on mental illness, mental deficiency, epilepsy, habit forming drug addiction, narcotic drug addiction, dipsomania or inebriety, sexual psychopathy, or such mental abnormality as to evidence utter lack of power to control sexual impulses~~ any mental or emotional condition, including addiction, for which a person may be detained, cared for, or treated in a mental institution .

Comment. Section 854.4 is amended to eliminate the specific listing of mental or emotional conditions for which a person could, at the time the section was enacted, be committed to a public medical facility and to substitute general language that includes all mental or emotional conditions for which a person may be voluntarily admitted or involuntarily detained in a mental institution. See Section 854.2 (defining "mental institution").

Since enactment of Section 854.4 in 1963, the Welfare and Institutions Code has been revised to make a number of changes in the categories of mental illness previously specified in this section. The amendment eliminates the inconsistency between Section 854.4 and the revised provisions of the Welfare and Institutions Code relating to mental illness and minimizes, if not eliminates, the possibility that future revisions of those provisions will create a similar inconsistency.

Sec. 8. Section 854.8 of the Government Code is amended to read:

854.8. (a) Notwithstanding any other provision of ~~law~~ this part , except as provided in ~~subdivisions (b), (c) and (d) of~~ this section and in Sections 814, 814.2, 855, and 855.2 , a public entity is not liable for ~~:-(1)-An~~ an injury proximately caused by , ~~any person committed or admitted to a mental institution.--(2)--An injury to any person committed or admitted to~~ or to, an inmate of a mental institution.

(b) Nothing in this section affects the liability of a public entity under Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code.

(c) Nothing in this section prevents a person, other than ~~a person committed or admitted to~~ an inmate of a mental institutuon, from recovering from the public entity for an injury resulting from the dangerous condition of public property under Chapter 2 (commencing with Section 830) of this part.

(d) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission. The public entity may but is not required to pay any judgment, compromise or settlement, or may but is not required to indemnify any public employee, in any case where the public entity is immune from liability under this section; except that the public entity shall pay, as provided in Article 4 (commencing with Section 825) of

Chapter 1 of this part, any judgment based on a claim against a public employee ~~licensed in~~ who is lawfully engaged in the practice of one of the healing arts under ~~Division 2 (commencing with Section 500) of the Business and Professions Code~~ any law of this state for malpractice arising from an act or omission in the scope of his employment, and shall pay any compromise or settlement of a claim or action based on such malpractice to which the public entity has agreed.

Comment. The changes in subdivision (d) and in the introductory portion of subdivision (a) of Section 854.8 parallel the similar amendments to Section 844.6 and are explained in the Comment to that section. Subdivision (a) is further amended to clarify the scope of the immunity. The term "inmate" is used in place of "any person committed or admitted," thus making clear that the immunity does not cover outpatients.

Sec. 9. Section 855.2 of the Government Code is amended to read:

855.2. Neither a public entity nor a public employee acting within the scope of his employment is liable for interfering with the right of an inmate of a medical facility operated or maintained by a public entity to obtain a judicial determination or review of the legality of his confinement; but a public employee, and the public entity where the employee is acting within the scope of his employment, is liable for injury proximately caused by the employee's intentional and unjustifiable interference with such right, but no cause of action for such injury ~~may be commenced~~ shall be deemed to accrue until it has first been determined that the confinement was illegal.

Comment. The amendment to Section 855.2 is similar to that made to Section 845.4. See the Comment to Section 845.4.

Sec. 10. Section 856 of the Government Code is amended to read:

856. (a) Neither a public entity nor a public employee acting within the scope of his employment is liable for any injury resulting from determining in accordance with any applicable enactment:

(1) Whether to confine a person for mental illness or addiction.

(2) The terms and conditions of confinement for mental illness or addiction ~~in a medical facility operated or maintained by a public entity~~ .

(3) Whether to parole , grant a leave of absence to, or release a person ~~from confinement~~ confined for mental illness or addiction ~~in a medical facility operated or maintained by a public entity~~ .

(b) A public employee is not liable for carrying out with due care a determination described in subdivision (a).

(c) Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission in carrying out or failing to carry out:

(1) A determination to confine or not to confine a person for mental illness or addiction.

(2) The terms or conditions of confinement of a person for mental illness or addiction ~~in a medical facility operated or maintained by a public entity~~ .

(3) A determination to parole , grant a leave of absence to, or release a person ~~from confinement~~ confined for mental illness or addiction ~~in a medical facility operated or maintained by a public entity~~ .

(d) As used in this section, "confine" includes admit, commit, place, detain, and hold in custody.

Comment. Section 856 is amended to make reference to "leave of absence" since the Welfare and Institutions Code appears to consider such leaves equivalent to paroles. See Welf. & Inst. Code § 7351. Subdivision (d) has been added to clarify application of this section to all cases within its rationale. The phrase "in a medical facility operated or maintained by a public entity," which appeared four times in the section, has been deleted because, to the extent that this phrase had any substantive effect, it resulted in an undesirable limitation on the immunity provided by Section 856.

Sec. 11. Sections 856.2 of the Government Code is amended to read:

856.2. Neither a public entity nor a public employee is liable for an injury caused by or to an escaping or escaped person who has been ~~committed~~ confined for mental illness or addiction. Nothing in this section exonerates a public employee from liability if he acted or failed to act because of actual fraud, corruption, or actual malice.

Comment. The amendment of Section 856.2--by insertion of the words, "or to"--makes it clear that injuries sustained by escaping or escaped mental patients are not a basis of liability. Other jurisdictions have recognized that, when a mental patient escapes as a result of negligent or wrongful acts or omissions of custodial employees, injuries sustained by the escapee as a result of his inability due to mental deficiency or illness to cope with ordinary risks encountered, may be a basis of state liability. See, e.g., Callahan v. State of New York, 179 Misc. 781, 40 N.Y.S.2d 109 (Ct. Cl. 1943), aff'd 266 App. Div. 1054, 46 N.Y.S.2d 104 (1943)(frostbite sustained by escaped mental patient); White v. United States, 317 F.2d 13 (4th Cir. 1963)(escaped mental patient killed by train). The immunity provided by Section 856.2 makes certain that California will not follow these cases. Although there is a substantial overlap in the immunity provided by Section 856.2 and the broad immunity provided by Section 854.8, Section 856.2 covers patients in the state hospitals for the mentally retarded while Section 854.8 does not.

Formerly, Section 856.2 covered only persons who had been "committed" for mental illness or addiction. The substitution of "confined" for

"committed" makes clear that the immunity covers all persons who are confined for mental illness or addiction, whether or not they are "committed."

The second sentence has been added so that a public employee who, for example, maliciously injures an escaped mental patient cannot avoid liability. This addition is required since the immunity has been extended to include injuries caused to an escaping or escaped mental patient. The sentence adopts language used in other provisions of the Governmental Liability Act. See, e.g., Section 995.2 (grounds for refusal to provide for defense of action against public employee).