CALIFORNIA LAWS

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BUSINESS AND PROFESSIONS CODE

Division 2 HEALING ARTS

Chapter 1 GENERAL PROVISIONS

Article 7.5 HEALTH CARE PRACTITIONERS

§ 680. Name tags for health care practitioners; display

(a) Except as otherwise provided in this section, a health care practitioner shall disclose, while working, his or her name and practitioner's license status, as granted by this state, on a name tag in at least 18–point type. A health care practitioner in a practice or an office, whose license is prominently displayed, may opt to not wear a name tag. If a health care practitioner or a licensed clinical social worker is working in a psychiatric setting or in a setting that is not licensed by the state, the employing entity or agency shall have the discretion to make an exception from the name tag requirement for individual safety or therapeutic concerns. In the interest of public safety and consumer awareness, it shall be unlawful for any person to use the title "nurse" in reference to himself or herself and in any capacity, except for an individual who is a registered nurse or a licensed vocational nurse, or as otherwise provided in Section 2800. Nothing in this section shall prohibit a certified nurse assistant from using his or her title.

(b) Facilities licensed by the State Department of Social Services, the State Department of Mental Health, or the State Department of Health Services shall develop and implement policies to ensure that health care practitioners providing care in those facilities are in compliance with subdivision (a). The State Department of Social Services, the State Department of Mental Health, and the State Department of Health Services shall verify through periodic inspections that the policies required pursuant to subdivision (a) have been developed and implemented by the respective licensed facilities.

(c) For purposes of this article, "health care practitioner" means any person who engages in acts that are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

(Added by Stats.1998, c. 1013 (A.B.1439), § 1. Amended by Stats.1999, c. 411 (A.B.1433), § 1; Stats.2000, c. 135 (A.B.2539), § 2.)

Article 11 PROFESSIONAL REPORTING

§ 800. Central files; creation; contents; complaint forms; confidentiality

(a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, and the California State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

(1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.

(2) Any judgment or settlement requiring the licensee or his or her insurer to pay any amount of damages in excess of three thousand dollars ($3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

(3) Any public complaints for which provision is made pursuant to subdivision (b).

(4) Disciplinary information reported pursuant to Section 805.

(b) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information that the board shall include in the central file.

Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

These disclosures shall effect no change in the confidential status of these records.

(Added by Stats.1975, 2nd Ex.Sess., c. 1, p. 3950, § 2.3. Amended by Stats.1975, 2nd Ex.Sess., c. 2, p. 3978, § 1.005, eff. Sept. 24, 1975, operative Dec. 12, 1975; Stats.1976, c. 1185, p. 5290, § 1; Stats.1980, c. 1313, p. 4443, § 1; Stats.1987, c. 721, § 1; Stats.1989, c. 886, § 10; Stats.1989, c. 354, § 1; Stats.1991, c. 1091 (A.B.1487), § 1; Stats.1991, c. 359 (A.B.1332), § 5; Stats.1994, c. 26 (A.B.1807), § 15.5, eff. March 30, 1994; Stats.1995, c. 5 (S.B.158), § 1; Stats.1995, c. 60 (S.B.42), § 6, eff. July 6, 1995; Stats.1995, c. 708

(S.B.609), § 1.5; Stats.1997, c. 759 (S.B.827), § 9; Stats.1999, c. 252 (A.B.352), § 1; Stats.1999, c. 655 (S.B.1308), § 2; Stats.2002, c. 1085 (S.B.1950), § 1; Stats.2002, c. 1150 (S.B.1955), § 2.5.)

§ 801. Settlement or arbitration award; report by insurer; consent of insured

(a) Every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency mentioned in subdivision (a) of Section 800 (except as provided in subdivisions (b), (c), (d), and (e)) shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement over thirty thousand dollars ($30,000); or arbitration award of any amount; or civil judgment of any amount, whether or not vacated by a settlement after entry of the judgment, that was not reversed on appeal; of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. A settlement over thirty thousand dollars ($30,000) shall also be reported if the settlement is based on the licensee's negligence, error, or omission in practice, or by the licensee's rendering of unauthorized professional services, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto, within 30 days after service of the arbitration award on the parties, or within 30 days after the date of entry of the civil judgment.

(c) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) Every insurer providing liability insurance to a veterinarian licensed pursuant to Chapter 60 (commencing with Section 4825)[1] shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(f) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by subdivision (a), (b), (c), or (d) has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

(g) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.

(Added by Stats.1975, 2nd Ex.Sess., c. 1, p. 3950, § 2.3. Amended by Stats.1979, c. 923, p. 3199, § 1; Stats.1989, c. 886, § 11; Stats.1989, c. 398, § 1; Stats.1991, c. 1091 (A.B.1487), § 2; Stats.1991, c. 359 (A.B.1332), § 6; Stats.1994, c. 468 (A.B.559), § 1; Stats.1994, c. 1206 (S.B.1775), § 8; Stats.1995, c. 5 (S.B.158), § 2; Stats.1997, c. 359 (A.B.103), § 1; Stats.2002, c. 1085 (S.B.1950), § 2; Stats.2004, c. 467 (S.B.1548), § 1.)

[1]So in enrolled bill.

§ 801.1. Settlement or arbitration award; reports by self–insuring governmental agencies

(a) Every state or local governmental agency that self insures a person who holds a license, certificate or similar authority from or under any agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) of Division 2 or the Osteopathic Initiative Act) shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every state or local governmental agency that self–insures a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement or arbitration award over thirty thousand dollars ($30,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error or omission in practice, or rendering of unauthorized professional services. A settlement over thirty thousand dollars ($30,000) shall also be reported if the settlement is based on the licensee's negligence, error, or omission in practice or by his or her rendering of unauthorized professional services, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every state or local governmental agency that self–insures a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars

($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.
(Added by Stats.1995, c. 708 (S.B.609), § 2. Amended by Stats.2002, c. 1085 (S.B.1950), § 3.)

§ 802. Settlement or arbitration award; report by holder of authority, parties or counsel; public offense, fines

(a) Every settlement, judgment, or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a person who holds a license, certificate, or other similar authority from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) of Division 2) or the Osteopathic Initiative Act who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the licensee or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500). Knowing and intentional failure to comply with this section or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

(b) Every settlement over thirty thousand dollars ($30,000), or judgment or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2, or the Osteopathic Initiative Act, who does not possess professional liability insurance as to the claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A settlement over thirty thousand dollars ($30,000) shall also be reported if the settlement is based on the licensee's negligence, error, or omission in practice or his or her rendering of unauthorized professional services, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee. A complete report including the name and license number of the physician and surgeon shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the physician and surgeon or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) nor more than five hundred dollars ($500). Knowing and intentional failure to comply with this section or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

(c) Every settlement, judgment, or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or by the unauthorized rendering of professional services, by a marriage and family therapist or clinical social worker licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage and family therapist or clinical social worker or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) nor more than five hundred dollars ($500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section or to hinder or impede any other person in that compliance, is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).
(Added by Stats.1975, 2nd Sess., c. 1, p. 3950, § 2.3. Amended by Stats.1979, c. 923, p. 3200, § 2; Stats.1989, c. 398, § 2; Stats.1997, c. 359 (A.B.103), § 2; Stats.2001, c. 728 (S.B.724), § 1.5; Stats.2002, c. 1085 (S.B.1950), § 4; Stats.2005, c. 674 (S.B.231), § 4.)

§ 802.1. Felony indictment or information; felony or certain misdemeanor convictions; report to medical board by physician or surgeon

(a) A physician and surgeon shall report either of the following to the Medical Board of California in writing within 30 days:

(1) The bringing of an indictment or information charging a felony against the physician and surgeon.

(2) The conviction of the physician and surgeon, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor. A physician and surgeon shall report only those misdemeanors that are substantially related to the qualifications, functions, or duties of a physician and surgeon defined or identified by the Legislature pursuant to subdivision (d) of Section 2027.

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars ($5,000).
(Added by Stats.1995, c. 708 (S.B.609), § 2.5. Amended by Stats.2005, c. 216 (A.B.268), § 1; Stats.2005, c. 674 (S.B.231), § 5.)

§ 802.3. Settlement reports; specification of specialty or subspecialty of physician and surgeon

Every report of a settlement required by Sections 801, 801.1, and 802 shall specify the specialty or subspecialty of the physician and surgeon involved.
(Added by Stats.2002, c. 1085 (S.B.1950), § 5.)

§ 802.5. Receipt of information by coroner based on findings by board–certified or board–eligible pathologist of death due to gross negligence or incompetence of physician or podiatrist; initial report; subsequent submission of other information; confidentiality; immunity from liability

(a) When a coroner receives information that is based on findings that were reached by, or documented and approved by a board–certified or board–eligible pathologist indicating that a death may be the result of a physician's or podiatrist's gross negligence or incompetence, a report shall be filed with the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine. The initial report shall include the name of the decedent, date and place of death, attending physicians or podiatrists, and all other relevant information available. The initial report shall be followed, within 90 days, by copies of the coroner's report, autopsy protocol, and all other relevant information.

(b) The report required by this section shall be confidential. No coroner, physician and surgeon, or medical examiner, nor any authorized agent, shall be liable for damages in any civil action as a result of his or her acting in compliance with this section. No board–certified or board–eligible pathologist, nor any authorized agent, shall be liable for damages in any civil action as a result of his or her providing information under subdivision (a).

(Added by Stats.1990, c. 1597 (S.B.2375), § 2. Amended by Stats.2005, c. 216 (A.B.268), § 2.)

§ 803. Judgment against holder of license, certificate or other authority; reports to issuing agency and medical board; release of information to public

(a)(1) Except as provided in paragraph (2), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from the Board of Behavioral Science Examiners or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200)) has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars ($30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

(2) For purposes of a physician and surgeon who has committed a crime, or is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) shall send a complete report including the name and license number of the physician and surgeon to the Medical Board of California or the Osteopathic Medical Board of California as to any judgment of a claim for damages for death or personal injury caused by that licensee's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 calendar days after entry of judgment.

(c) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information received pursuant to subdivision (a) regarding felony convictions of, and judgments against, a physician and surgeon or doctor of podiatric medicine. The Division of Medical Quality, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may, by regulation, establish categories of information that need not be disclosed to the public because that information is unreliable or not sufficiently related to the licensee's professional practice.

(Added by Stats.1993, c. 1267 (S.B.916), § 4. Amended by Stats.1995, c. 708 (S.B.609), § 4; Stats.1997, c. 359 (A.B.103), § 3; Stats.2001, c. 728 (S.B.724), § 2; Stats.2005, c. 216 (A.B.268), § 3.)

§ 803.1. Medical, osteopathic, and podiatry boards; disclosure of information to public

(a) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information regarding any enforcement actions taken against a licensee by either board or by another state or jurisdiction, including all of the following:

(1) Temporary restraining orders issued.

(2) Interim suspension orders issued.

(3) Revocations, suspensions, probations, or limitations on practice ordered by the board, including those made part of a probationary order or stipulated agreement.

(4) Public letters of reprimand issued.

(5) Infractions, citations, or fines imposed.

(b) Notwithstanding any other provision of law, in addition to the information provided in subdivision (a), the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public all of the following:

(1) Civil judgments in any amount, whether or not vacated by a settlement after entry of the judgment, that were not reversed on appeal and arbitration awards in any amount of a claim or action for damages for death or personal injury caused by the physician and surgeon's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services.

(2)(A) All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the low–risk category if there are three or more settlements for that licensee within the last 10 years, except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the high–risk category if there are four or more settlements for that licensee within the last 10 years except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. Classification of a licensee in either a "high–risk category" or a "low–risk category" depends upon the specialty or subspecialty practiced by the licensee and the designation assigned to that specialty or subspecialty by the Medical Board of California, as described in subdivision (e). For the purposes of this paragraph, "settlement" means a settlement of an action described in paragraph (1) entered into by the licensee on or after January 1, 2003, in an amount of thirty thousand dollars ($30,000) or more.

(B) The board shall not disclose the actual dollar amount of a settlement but shall put the number and amount of the settlement in context by doing the following:

(i) Comparing the settlement amount to the experience of other licensees within the same specialty or subspecialty, indicating if it is

below average, average, or above average for the most recent 10–year period.

(ii) Reporting the number of years the licensee has been in practice.

(iii) Reporting the total number of licensees in that specialty or subspecialty, the number of those who have entered into a settlement agreement, and the percentage that number represents of the total number of licensees in the specialty or subspecialty.

(3) Current American Board of Medical Specialty certification or board equivalent as certified by the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine.

(4) Approved postgraduate training.

(5) Status of the license of a licensee. By January 1, 2004, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall adopt regulations defining the status of a licensee. The board shall employ this definition when disclosing the status of a licensee pursuant to Section 2027.

(6) Any summaries of hospital disciplinary actions that result in the termination or revocation of a licensee's staff privileges for medical disciplinary cause or reason.

(c) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may by regulation establish categories of information that need not be disclosed to an inquiring member of the public because that information is unreliable or not sufficiently related to the licensee's professional practice. The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall include the following statement when disclosing information concerning a settlement:

"Some studies have shown that there is no significant correlation between malpractice history and a doctor's competence. At the same time, the State of California believes that consumers should have access to malpractice information. In these profiles, the State of California has given you information about both the malpractice settlement history for the doctor's specialty and the doctor's history of settlement payments only if in the last 10 years, the doctor, if in a low–risk specialty, has three or more settlements or the doctor, if in a high–risk specialty, has four or more settlements. The State of California has excluded some class action lawsuits because those cases are commonly related to systems issues such as product liability, rather than questions of individual professional competence and because they are brought on a class basis where the economic incentive for settlement is great. The State of California has placed payment amounts into three statistical categories: below average, average, and above average compared to others in the doctor's specialty. To make the best health care decisions, you should view this information in perspective. You could miss an opportunity for high–quality care by selecting a doctor based solely on malpractice history.

When considering malpractice data, please keep in mind:

Malpractice histories tend to vary by specialty. Some specialties are more likely than others to be the subject of litigation. This report compares doctors only to the members of their specialty, not to all doctors, in order to make an individual doctor's history more meaningful.

This report reflects data only for settlements made on or after January 1, 2003. Moreover, it includes information concerning those settlements for a 10–year period only. Therefore, you should know that a doctor may have made settlements in the 10 years immediately preceding January 1, 2003, that are not included in this report. After January 1, 2013, for doctors practicing less than 10 years, the data covers their total years of practice. You should take into account the effective date of settlement disclosure as well as how long the doctor has been in practice when considering malpractice averages.

The incident causing the malpractice claim may have happened years before a payment is finally made. Sometimes, it takes a long time for a malpractice lawsuit to settle. Some doctors work primarily with high–risk patients. These doctors may have malpractice settlement histories that are higher than average because they specialize in cases or patients who are at very high risk for problems.

Settlement of a claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the doctor. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.

You may wish to discuss information in this report and the general issue of malpractice with your doctor."

(d) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall, by regulation, develop standard terminology that accurately describes the different types of disciplinary filings and actions to take against a licensee as described in paragraphs (1) to (5), inclusive, of subdivision (a). In providing the public with information about a licensee via the Internet pursuant to Section 2027, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall not use the terms "enforcement," "discipline," or similar language implying a sanction unless the physician and surgeon has been the subject of one of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(e) The Medical Board of California shall adopt regulations no later than July 1, 2003, designating each specialty and subspecialty practice area as either high risk or low risk. In promulgating these regulations, the board shall consult with commercial underwriters of medical malpractice insurance companies, health care systems that self–insure physicians and surgeons, and representatives of the California medical specialty societies. The board shall utilize the carriers' statewide data to establish the two risk categories and the averages required by subparagraph (B) of paragraph (2) of subdivision (b). Prior to issuing regulations, the board shall convene public meetings with the medical malpractice carriers, self–insurers, and specialty representatives.

(f) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall provide each licensee with a copy of the text of any proposed public disclosure authorized by this section prior to release of the disclosure to the public. The licensee shall have 10 working days from the date the board provides the copy of the proposed public disclosure to propose corrections of factual inaccuracies. Nothing in this section shall prevent the board from disclosing information to the public prior to the expiration of the 10–day period.

(g) Pursuant to subparagraph (A) of paragraph (2) of subdivision (b), the specialty or subspecialty information required by this section shall group physicians by specialty board recognized pursuant to paragraph (5) of subdivision (h) of Section 651 unless a different grouping would be more valid and the board, in its statement of reasons for its regulations, explains why the validity of the grouping would be more valid.

(Added by Stats.1993, c. 1267 (S.B.916), § 4.5. Amended by Stats.1994, c. 1206 (S.B.1775), § 10; Stats.1997, c. 359 (A.B.103), § 4; Stats.2000, c. 836 (S.B.1554), § 2; Stats.2002, c. 1085 (S.B.1950), § 6.)

§ 803.2. Entry of judgment, settlement agreement or arbitration award against licensee; payment by employer; report to board

Every entry of settlement agreement over thirty thousand dollars ($30,000), or judgment or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by, or alleging, the negligence, error, or omission in practice, or the unauthorized rendering of professional services, by a physician and

surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act, when that judgment, settlement agreement, or arbitration award is entered against, or paid by, the employer of that licensee and not the licensee himself or herself, shall be reported to the appropriate board by the entity required to report the information in accordance with Sections 801, 801.1, 802, and 803 as an entry of judgment, settlement, or arbitration award against the negligent licensee. This report shall include the name and license number of the physician and surgeon.

"Employer" as used in this section means a professional corporation, a group practice, a health care facility or clinic licensed or exempt from licensure under the Health and Safety Code, a licensed health care service plan, a medical care foundation, an educational institution, a professional institution, a professional school or college, a general law corporation, a public entity, or a nonprofit organization that employs, retains, or contracts with a licensee referred to in this section. Nothing in this section shall be construed to authorize the employment of, or contracting with, any licensee in violation of Section 2400.

(Added by Stats.1993, c. 1267 (S.B.916), § 5. Amended by Stats.1994, c. 1206 (S.B.1775), § 11; Stats.1995, c. 708 (S.B.609), § 5; Stats.1996, c. 902 (S.B.2098), § 1; Stats.1997, c. 359 (A.B.103), § 5; Stats.2001, c. 728 (S.B.724), § 3.)

§ 803.3. Health care service plan contracts; arbitration awards; consideration as judgment for disclosure purposes

Any arbitration under a health care service plan contract for any death or personal injury resulting in an award for an amount in excess of thirty thousand dollars ($30,000) shall be a judgment for purposes of subdivision (b) of Section 803.

(Added by Stats.1994, c. 653 (A.B.3260), § 1.)

§ 803.5. Notification of filing against licensee

(a) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, or other appropriate allied health board, and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board. Where the licensee is regulated by an allied health board, the record of conviction shall be transmitted to that allied health board and the Medical Board of California.

(Added by Stats.1990, c. 1597 (S.B.2375), § 3. Amended by Stats.1993, c. 1267 (S.B.916), §6; Stats.1994, c. 1206 (S.B.1775), § 12; Stats.1995, c. 708 (S.B.609), § 6; Stats.2000, c. 867 (S.B.1988), § 4; Stats.2005, c. 216 (A.B.268), § 4.)

§ 803.6. Transmittal of felony preliminary hearing transcript or probation report to board

(a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to the Medical Board of California * * *, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, or other appropriate allied health board, as applicable, where the total length of the transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

(b) In any case where a probation report on a licensee is prepared for a court pursuant to Section 1203 of the Penal Code, a copy of that report shall be transmitted by the probation officer to the board.

(Added by Stats.1990, c. 1597 (S.B.2375), § 4. Amended by Stats.1993, c. 1267 (S.B.916), § 7; Stats.2005, c. 216 (A.B.268), § 5.)

§ 804. Reports to agency; form and contents; copies

(a) Any agency to whom reports are to be sent under Section 801, 801.1, 802, or 803, may develop a prescribed form for the making of the reports, usage of which it may, but need not, by regulation, require in all cases.

(b) A report required to be made by Sections 801, 801.1, or 802 shall be deemed complete only if it includes the following information: (1) the name and last known business and residential addresses of every plaintiff or claimant involved in the matter, whether or not each plaintiff or claimant recovered anything; (2) the name and last known business and residential addresses of every physician or provider of health care services who was claimed or alleged to have acted improperly, whether or not that person was a named defendant and whether or not any recovery or judgment was had against that person; (3) the name, address, and principal place of business of every insurer providing professional liability insurance as to any person named in (2), and the insured's policy number; (4) the name of the court in which the action or any part of the action was filed along with the date of filing and docket number of each action; (5) a brief description or summary of the facts upon which each claim, charge or judgment rested including the date of occurrence; (6) the names and last known business and residential addresses of every person who acted as counsel for any party in the litigation or negotiations, along with an identification of the party whom said person represented; (7) the date and amount of final judgment or settlement; and (8) any other information the agency to whom the reports are to be sent may, by regulation, require.

(c) Every person named in the report, who is notified by the board within 60 days of the filing of the report, shall maintain for the period of three years from the filing of the report any records he or she has as to the matter in question and shall make those available upon request to the agency with which the report was filed.

(d) Every professional liability insurer that makes a report under Section 801, or self–insured governmental agency that makes a report pursuant to Section 801.1, and has received a copy of any written patient medical or hospital records prepared by the treating physician or the staff of the treating physician or hospital, describing the medical condition, history, care, or treatment of the person whose death or injury is the subject of the claim prompting the Section 801 or 801.1 report, or a copy of any depositions in the matter that discuss the care, treatment, or medical condition of the person, shall provide with the report copies of the records and depositions, subject to reasonable costs to be paid by the Medical Board of California to the insurer, except when confidentiality is required by court order. If confidentiality is required by court order and, as a result, the insurer is unable to provide the records and depositions, documentation to that effect shall accompany the original report. The applicable board may, upon prior notification of the parties to the action, petition the appropriate court for modification of any protective order to permit disclosure to the board. A professional liability insurer or self–insured governmental agency shall maintain the records and depositions referred to in this subdivision for at least one year from the date of the Section 801 or 801.1 report.

(Added by Stats.1975, 2nd Ex.Sess., c. 1, p. 3950, § 2.3. Amended by Stats.1975, 2nd Ex.Sess., c. 2, p. 3979, § 1.01, eff. Sept. 24, 1975, operative Dec. 12, 1975; Stats.1994, c. 1206 (S.B.1775), § 13; Stats.1995, c. 708 (S.B.609), § 7.)

§ 804.5. Board requests for medical records and depositions

The Medical Board of California may request a licensee, health care facility, self–insured governmental agency, or professional liability insurer that is required pursuant to Section 804 to comply with a request for medical records of a patient, or a copy of any

depositions in a case that discusses the care, treatment, or medical condition of a person, to permit representatives of the board to obtain copies of these records from the custodians of these records subject to reasonable costs to be paid by the Medical Board of California.
(Added by Stats.1995, c. 708 (S.B.609), § 7.5.)

§ 805. Definitions; specified actions requiring report to relevant agency; timeliness and contents; confidentiality; liability; fine for failure to make or transmit report

(a) As used in this section, the following terms have the following definitions:

(1) "Peer review body" includes:

(A) A medical or professional staff of any health care facility or clinic licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare program as an ambulatory surgical center.

(B) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that contracts with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code.

(C) Any medical, psychological, marriage and family therapy, social work, dental, or podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.

(D) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class that functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) "Licentiate" means a physician and surgeon, podiatrist, clinical psychologist, marriage and family therapist, clinical social worker, or dentist. "Licentiate" also includes a person authorized to practice medicine pursuant to Section 2113.

(3) "Agency" means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) "Staff privileges" means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) "Denial or termination of staff privileges, membership, or employment" includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, if the action is based on medical disciplinary cause or reason.

(6) "Medical disciplinary cause or reason" means that aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) "805 report" means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after the effective date of any of the following that occur as a result of an action of a peer review body:

(1) A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12–month period, for a medical disciplinary cause or reason.

(c) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after any of the following occur after notice of either an impending investigation or the denial or rejection of the application for a medical disciplinary cause or reason:

(1) Resignation or leave of absence from membership, staff, or employment.

(2) The withdrawal or abandonment of a licentiate's application for staff privileges or membership.

(3) The request for renewal of those privileges or membership is withdrawn or abandoned.

(d) For purposes of filing an 805 report, the signature of at least one of the individuals indicated in subdivision (b) or (c) on the completed form shall constitute compliance with the requirement to file the report.

(e) An 805 report shall also be filed within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

(f) A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report.

The information to be reported in an 805 report shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

If another peer review body is required to file an 805 report, a health care service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason. If the Medical Board of California or a licensing agency of another state revokes or suspends, without a stay, the license of a physician, a peer review body is not required to file an 805 report when it takes an action as a result of the revocation or suspension.

(g) The reporting required by this section shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and Sections 803.1 and 2027, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976.

(h) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall disclose reports as required by Section 805.5.

(i) An 805 report shall be maintained by an agency for dissemination purposes for a period of three years after receipt.

(j) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(k) A willful failure to file an 805 report by any person who is designated or otherwise required by law to file an 805 report is punishable by a fine not to exceed one hundred thousand dollars ($100,000) per violation. The fine may be imposed in any civil or

administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licentiate. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, "willful" means a voluntary and intentional violation of a known legal duty.

(*l*) Except as otherwise provided in subdivision (k), any failure by the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report, shall be punishable by a fine that under no circumstances shall exceed fifty thousand dollars ($50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars ($50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.

(m) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case–by–case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.

(Added by Stats.1987, c. 1044, § 3. Amended by Stats.1988, c. 419, § 1; Stats.1989, c. 886, § 12; Stats.1989, c. 1070, § 1; Stats.1990, c. 196 (A.B.1565), § 1; Stats.1990, c. 1597 (S.B.2375), § 5; Stats.1991, c. 359 (A.B.1332), § 7; Stats.1993, c. 1267 (S.B.916), § 8; Stats.1995, c. 279 (A.B.1471), § 1; Stats.1997, c. 359 (A.B.103), § 6; Stats.1999, c. 252 (A.B.352), § 2; Stats.2001, c. 614 (S.B.16), § 2; Stats.2002, c. 1012 (S.B.2025), § 3, eff. Sept. 27, 2002.)

§ 805.1. Documents from disciplinary proceeding resulting in loss of staff or membership privileges; inspection and copying by licensing or certificating agency; disclosure

(a) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall be entitled to inspect and copy the following documents in the record of any disciplinary proceeding resulting in action that is required to be reported pursuant to Section 805:

(1) Any statement of charges.

(2) Any document, medical chart, or exhibits in evidence.

(3) Any opinion, findings, or conclusions.

(b) The information so disclosed shall be kept confidential and not subject to discovery, in accordance with Section 800, except that it may be reviewed, as provided in subdivision (c) of Section 800, and may be disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(Added by Stats.1986, c. 1274, § 2. Amended by Stats.1989, c. 886, § 13; Stats.1991, c. 359 (A.B.1332), § 8; Stats.2001, c. 614 (S.B.16), § 3.)

§ 805.2. Peer review process; comprehensive study; legislative intent

(a) It is the intent of the Legislature to provide for a comprehensive study of the peer review process as it is conducted by peer review bodies defined in paragraph (1) of subdivision (a) of Section 805, in order to evaluate the continuing validity of Section 805 and Sections 809 to 809.8, inclusive, and their relevance to the conduct of peer review in California.

(b) The Medical Board of California shall contract with * * * an independent entity to conduct this study that is fair, objective, and free from bias that is directly familiar with the peer review process and does not advocate regularly before the board on peer review matters or on physician and surgeon disciplinary matters.

(c) The study by the independent entity shall include, but not be limited to, the following components:

(1) A comprehensive description of the various steps of and decisionmakers in the peer review process as it is conducted by peer review bodies throughout the state, including the role of other related committees of acute care health facilities and clinics involved in the peer review process.

(2) A survey of peer review cases to determine the incidence of peer review by peer review bodies, and whether they are complying with the reporting requirement in Section 805.

(3) A description and evaluation of the roles and performance of various state agencies, including the State Department of Health Services and occupational licensing agencies that regulate healing arts professionals, in receiving, reviewing, investigating, and disclosing peer review actions, and in sanctioning peer review bodies for failure to comply with Section 805.

(4) An assessment of the cost of peer review to licentiates and the facilities which employ them.

(5) An assessment of the time consumed by the average peer review proceeding, including the hearing provided pursuant to Section 809.2, and a description of any difficulties encountered by either licentiates or facilities in assembling peer review bodies or panels to participate in peer review decisionmaking.

(6) An assessment of the need to amend Section 805 and Sections 809 to 809.8, inclusive, to ensure that they continue to be relevant to the actual conduct of peer review as described in paragraph (1), and to evaluate whether the current reporting requirement is yielding timely and accurate information to aid licensing boards in their responsibility to regulate and discipline healing arts practitioners when necessary, and to assure that peer review bodies function in the best interest of patient care.

(7) Recommendations of additional mechanisms to stimulate the appropriate reporting of peer review actions under Section 805.

(8) Recommendations regarding the Section 809 hearing process to improve its overall effectiveness and efficiency.

(9) An assessment of the role of medical professionals, using professionals who are experts and are actively practicing medicine in this state, to review and investigate for the protection of consumers, allegations of substandard practice or professional misconduct.

(10) An assessment of the process to identify and retain a medical professional with sufficient expertise to review allegations of substandard practice or professional misconduct by a physician and surgeon, if the peer review process is discontinued.

* * * (d) The independent entity shall exercise no authority over the peer review processes of peer review bodies. However, peer

review bodies, health care facilities, health care clinics, and health care service plans shall cooperate with the * * * independent entity and provide data, information, and case files as requested in the timeframes specified by the * * * independent entity.

* * * (e) The independent entity shall work in cooperation with and under the general oversight of the Executive Director of the Medical Board of California and shall submit a written report with its findings and recommendations to the board and the Legislature no later than * * * July 31, 2007.

* * *

(f) Completion of the peer review study pursuant to this section shall be among the highest priorities of the Medical Board of California, and the board shall ensure that it is completed no later than July 31, 2007.

(Added by Stats.2001, c. 615 (S.B.26), § 2, eff. Oct. 9, 2001. Amended by Stats.2002, c. 664 (A.B.3034), § 1; Stats.2002, c. 1079 (S.B.1244), § 2, eff. Sept. 29, 2002; Stats.2005, c. 674 (S.B.231), § 6.)

§ 805.5. Grant or renewal of staff privileges for certain medical professionals; inquiries concerning 805 reports; exclusions; misdemeanor

(a) Prior to granting or renewing staff privileges for any physician and surgeon, psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or any health care service plan or medical care foundation, or the medical staff of the institution shall request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon, psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.

(b) Upon a request made by, or on behalf of, an institution described in subdivision (a) or its medical staff, which is received on or after January 1, 1980, the board shall furnish a copy of any report made pursuant to Section 805. However, the board shall not send a copy of a report (1) if the denial, removal, or restriction was imposed solely because of the failure to complete medical records, (2) if the board has found the information reported is without merit, or (3) if a period of three years has elapsed since the report was submitted. This three–year period shall be tolled during any period the licentiate has obtained a judicial order precluding disclosure of the report, unless the board is finally and permanently precluded by judicial order from disclosing the report. In the event a request is received by the board while the board is subject to a judicial order limiting or precluding disclosure, the board shall provide a disclosure to any qualified requesting party as soon as practicable after the judicial order is no longer in force.

In the event that the board fails to advise the institution within 30 working days following its request for a report required by this section, the institution may grant or renew staff privileges for the physician and surgeon, psychologist, podiatrist, or dentist.

(c) Any institution described in subdivision (a) or its medical staff that violates subdivision (a) is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200).

(Added by Stats.1979, c. 602, p. 1875, § 2. Amended by Stats.1983, c. 1092, § 4, eff. Sept. 27, 1983, operative Jan. 1, 1984; Stats.1987, c. 721, § 2; Stats.1989, c. 886, § 14; Stats.1991, c. 359 (A.B.1332), § 9; Stats.1999, c. 655 (S.B.1308), § 3; Stats.2001, c. 614 (S.B.16), § 5.)

§ 805.6. Electronic notification and access to Section 805 reports

(a) The Medical Board of California, the Osteopathic Medical Board, and the Dental Board of California shall establish a system of electronic notification that is either initiated by the board or can be accessed by qualified subscribers, and that is designed to achieve early notification to qualified recipients of the existence of new reports that are filed pursuant to Section 805.

(b) The State Department of Health Services shall notify the appropriate licensing agency of any reporting violations pursuant to Section 805.

(c) The Department of Managed Health Care shall notify the appropriate licensing agency of any reporting violations pursuant to Section 805.

(Added by Stats.2001, c. 614 (S.B.16), § 6.)

§ 805.7. Pilot program concerning quality problems and resolution through informal educational intervention; recommendations and report

(a) The Medical Board of California shall work with interested parties in the pursuit and establishment of a pilot program, similar to those proposed by the Citizens Advocacy Center, of early detection of potential quality problems and resolutions through informal educational interventions.

(b) The Medical Board of California shall report to the Legislature its evaluation and findings and shall include recommendations regarding the statewide implementation of this pilot program before April 1, 2004.

(Added by Stats.2001, c. 614 (S.B.16), § 7. Amended by Stats.2002, c. 1012 (S.B.2025), § 4, eff. Sept. 27, 2002.)

§ 806. Statistical report; presentation to legislature

Each agency in the department receiving reports pursuant to the preceding sections shall prepare a statistical report based upon these records for presentation to the Legislature not later than 30 days after the commencement of each regular session of the Legislature, including by the type of peer review body, and, where applicable, type of health care facility, the number of reports received and a summary of administrative and disciplinary action taken with respect to these reports and any recommendations for corrective legislation if the agency considers legislation to be necessary.

(Added by Stats.1975, 2nd Ex.Sess., c. 1, p. 3950, § 2.3. Amended by Stats.2001, c. 614 (S.B.16), § 8.)

§ 807. Notice of provisions of article

Each agency in the department shall notify every person licensed, certified or holding similar authority issued by it, and the department shall notify every insurance company doing business in this state and every institution mentioned in Section 805 of the provisions of this article.

(Added by Stats.1975, 2nd Ex.Sess., c. 1, p. 3950, § 2.3.)

§ 808. Respiratory care practitioners; reports

For purposes of this article, reports affecting respiratory care practitioners required to be filed under Sections 801, 802, and 803 shall be filed with the Respiratory Care Board of California.

(Added by Stats.1987, c. 839, § 1. Amended by Stats.1994, c. 1274 (S.B.2039), § 1.7.)

§ 808.5. Reports affecting psychologists; filing with Board of Psychology of the Department of Consumer Affairs

For purposes of this article, reports affecting psychologists required to be filed under Sections 801, 801.1, 802, 803, 803.5, and 803.6 shall be filed with the Board of Psychology of the Department of Consumer Affairs.

(Added by Stats.1999, c. 655 (S.B.1308), § 4.)

§ 809. Legislative findings and declarations

(a) The Legislature hereby finds and declares the following:

(1) In 1986, Congress enacted the Health Care Quality Improvement Act of 1986 (Chapter 117 (commencing with Section 11101) Title 42, United States Code), to encourage physicians to

engage in effective professional peer review, but giving each state the opporunity[1] to "opt–out" of some of the provisions of the federal act.

(2) Because of deficiencies in the federal act and the possible adverse interpretations by the courts of the federal act, it is preferable for California to "opt–out" of the federal act and design its own peer review system.

(3) Peer review, fairly conducted, is essential to preserving the highest standards of medical practice.

(4) Peer review which is not conducted fairly results in harm both to patients and healing arts practitioners by limiting access to care.

(5) Peer review, fairly conducted, will aid the appropriate state licensing boards in their responsibility to regulate and discipline errant healing arts practitioners.

(6) To protect the health and welfare of the people of California, it is the policy of the State of California to exclude, through the peer review mechanism as provided for by California law, those healing arts practitioners who provide substandard care or who engage in professional misconduct, regardless of the effect of that exclusion on competition.

(7) It is the intent of the Legislature that peer review of professional health care services be done efficiently, on an ongoing basis, with an emphasis on early detection of potential quality problems and resolutions through informal educational interventions.

(8) Sections 809 to 809.8, inclusive, shall not affect the respective responsibilities of the organized medical staff or the governing body of an acute care hospital with respect to peer review in the acute care hospital setting. It is the intent of the Legislature that written provisions implementing Sections 809 to 809.8, inclusive, in the acute care hospital setting shall be included in medical staff bylaws which shall be adopted by a vote of the members of the organized medical staff and which shall be subject to governing body approval, which approval shall not be withheld unreasonably.

(9)(A) The Legislature thus finds and declares that the laws of this state pertaining to the peer review of healing arts practitioners shall apply in lieu of Chapter 117 (commencing with Section 11101) of Title 42 of the United States Code, because the laws of this state provide a more careful articulation of the protections for both those undertaking peer review activity and those subject to review, and better integrates public and private systems of peer review. Therefore, California exercises its right to opt out of specified provisions of the Health Care Quality Improvement Act relating to professional review actions, pursuant to subparagraph (B) of paragraph (2) of subdivision (c) of Section 11111 of Chapter 117 of Title 42 of the United States Code. This election shall not affect the availability of any immunity under California law.

(B) The Legislature further declares that it is not the intent or purposes of Sections 809 to 809.8, inclusive, to opt out of any mandatory national data bank established pursuant to Subchapter II (commencing with Section 11131) of Chapter 117 of Title 42 of the United States Code.

(b) For the purpose of this section and Sections 809.1 to 809.8, inclusive, "healing arts practitioner" or "licentiate" means a physician and surgeon, podiatrist, clinical psychologist, or dentist; and "peer review body" means a peer review body as specified in paragraph (1) of subdivision (a) of Section 805, and includes any designee of the peer review body.

(Added by Stats.1989, c. 336, § 1, eff. Sept. 11, 1989, operative Sept. 11, 1989.)

[1]So in enrolled bill.

§ 809.05. Peer review; limitations; investigation and disciplinary action; direction from governing body; failure to follow direction

It is the policy of this state that peer review be performed by licentiates. This policy is subject to the following limitations:

(a) The governing bodies of acute care hospitals have a legitimate function in the peer review process. In all peer review matters, the governing body shall give great weight to the actions of peer review bodies and, in no event, shall act in an arbitrary or capricious manner.

(b) In those instances in which the peer review body's failure to investigate, or initiate disciplinary action, is contrary to the weight of the evidence, the governing body shall have the authority to direct the peer review body to initiate an investigation or a disciplinary action, but only after consultation with the peer review body. No such action shall be taken in an unreasonable manner.

(c) In the event the peer review body fails to take action in response to a direction from the governing body, the governing body shall have the authority to take action against a licentiate. Such action shall only be taken after written notice to the peer review body and shall fully comply with the procedures and rules applicable to peer review proceedings established by Sections 809.1 to 809.6, inclusive.

(d) A governing body and the medical staff shall act exclusively in the interest of maintaining and enhancing quality patient care.

(e) It is not the intent or purpose of this section to prohibit or discourage public members on state licensing boards and medical quality review committees from participating in disciplinary actions as authorized by law.

(Added by Stats.1989, c. 336, § 1.5, eff. Sept. 11, 1989, operative Jan. 1, 1990; Stats.1989, c. 354, § 2, operative Jan. 1, 1990.)

§ 809.1. Final proposed action of peer review body; written notice; content

(a) A licentiate who is the subject of a final proposed action of a peer review body for which a report is required to be filed under Section 805 shall be entitled to written notice as set forth in subdivisions (b) and (c). For the purposes of this section, the "final proposed action" shall be the final decision or recommendation of the peer review body after informal investigatory activity or prehearing meetings, if any.

(b) The peer review body shall give the licentiate written notice of the final proposed action. This notice shall include all the following information:

(1) That an action against the licentiate has been proposed by the peer review body which, if adopted, shall be taken and reported pursuant to Section 805.

(2) The final proposed action.

(3) That the licentiate has the right to request a hearing on the final proposed action.

(4) The time limit, within which to request such a hearing.

(c) If a hearing is requested on a timely basis, the peer review body shall give the licentiate a written notice stating all of the following:

(1) The reasons for the final proposed action taken or recommended, including the acts or omissions with which the licentiate is charged.

(2) The place, time, and date of the hearing.

(Added by Stats.1989, c. 336, § 2, eff. Sept. 11, 1989, operative Jan. 1, 1990.)

Application

For application of this section to peer review proceedings, see Business and Professions Code § 809.7.

§ 809.2. Hearing concerning final proposed action by peer review body; procedures; voir dire; inspection of documents; decision; witnesses; continuances; commencement

If a licentiate timely requests a hearing concerning a final proposed action for which a report is required to be filed under Section 805, the following shall apply:

(a) The hearing shall be held, as determined by the peer review body, before a trier of fact, which shall be an arbitrator or arbitrators selected by a process mutually acceptable to the licentiate and the peer review body, or before a panel of unbiased individuals who shall gain no direct financial benefit from the outcome, who have not acted as an accuser, investigator, factfinder, or initial decisionmaker in the same matter, and which shall include, where feasible, an individual practicing the same specialty as the licentiate.

(b) If a hearing officer is selected to preside at a hearing held before

a panel, the hearing officer shall gain no direct financial benefit from the outcome, shall not act as a prosecuting officer or advocate, and shall not be entitled to vote.

(c) The licentiate shall have the right to a reasonable opportunity to voir dire the panel members and any hearing officer, and the right to challenge the impartiality of any member or hearing officer. Challenges to the impartiality of any member or hearing officer shall be ruled on by the presiding officer, who shall be the hearing officer if one has been selected.

(d) The licentiate shall have the right to inspect and copy at the licentiate's expense any documentary information relevant to the charges which the peer review body has in its possession or under its control, as soon as practicable after the receipt of the licentiate's request for a hearing. The peer review body shall have the right to inspect and copy at the peer review body's expense any documentary information relevant to the charges which the licentiate has in his or her possession or control as soon as practicable after receipt of the peer review body's request. The failure by either party to provide access to this information at least 30 days before the hearing shall constitute good cause for a continuance. The right to inspect and copy by either party does not extend to confidential information referring solely to individually identifiable licentiates, other than the licentiate under review. The arbitrator or presiding officer shall consider and rule upon any request for access to information, and may impose any safeguards the protection of the peer review process and justice requires.

(e) When ruling upon requests for access to information and determining the relevancy thereof, the arbitrator or presiding officer shall, among other factors, consider the following:

(1) Whether the information sought may be introduced to support or defend the charges.

(2) The exculpatory or inculpatory nature of the information sought, if any.

(3) The burden imposed on the party in possession of the information sought, if access is granted.

(4) Any previous requests for access to information submitted or resisted by the parties to the same proceeding.

(f) At the request of either side, the parties shall exchange lists of witnesses expected to testify and copies of all documents expected to be introduced at the hearing. Failure to disclose the identity of a witness or produce copies of all documents expected to be produced at least 10 days before the commencement of the hearing shall constitute good cause for a continuance.

(g) Continuances shall be granted upon agreement of the parties or by the arbitrator or presiding officer on a showing of good cause.

(h) A hearing under this section shall be commenced within 60 days after receipt of the request for hearing, and the peer review process shall be completed within a reasonable time, after a licentiate receives notice of a final proposed action or an immediate suspension or restriction of clinical privileges, unless the arbitrator or presiding officer issues a written decision finding that the licentiate failed to comply with subdivisions (d) and (e) in a timely manner, or consented to the delay.

(Added by Stats.1989, c. 336, § 3, eff. Sept. 11, 1989, operative Jan. 1, 1990.)

Application

For application of this section to peer review proceedings, see Business and Professions Code § 809.7.

§ 809.3. Rights of parties at hearing concerning final proposed action

(a) During a hearing concerning a final proposed action for which reporting is required to be filed under Section 805, both parties shall have all of the following rights:

(1) To be provided with all of the information made available to the trier of fact.

(2) To have a record made of the proceedings, copies of which may be obtained by the licentiate upon payment of any reasonable charges associated with the preparation thereof.

(3) To call, examine, and cross–examine witnesses.

(4) To present and rebut evidence determined by the arbitrator or presiding officer to be relevant.

(5) To submit a written statement at the close of the hearing.

(b) The burden of presenting evidence and proof during the hearing shall be as follows:

(1) The peer review body shall have the initial duty to present evidence which supports the charge or recommended action.

(2) Initial applicants shall bear the burden of persuading the trier of fact by a preponderance of the evidence of their qualifications by producing information which allows for adequate evaluation and resolution of reasonable doubts concerning their current qualifications for staff privileges, membership, or employment. Initial applicants shall not be permitted to introduce information not produced upon request of the peer review body during the application process, unless the initial applicant establishes that the information could not have been produced previously in the exercise of reasonable diligence.

(3) Except as provided above for initial applicants, the peer review body shall bear the burden of persuading the trier of fact by a preponderance of the evidence that the action or recommendation is reasonable and warranted.

(c) The peer review body shall adopt written provisions governing whether a licentiate shall have the option of being represented by an attorney at the licentiate's expense. No peer review body shall be represented by an attorney if the licentiate is not so represented, except dental professional society peer review bodies may be represented by an attorney provided that the peer review body grants each licentiate the option of being represented by an attorney at the licentiate's expense, even if the licentiate declines to be represented by an attorney.

(Added by Stats.1989, c. 336, § 4, eff. Sept. 11, 1989, operative Jan. 1, 1990. Amended by Stats.1990, c. 332 (A.B.2124), § 1.)

Application

For application of this section to peer review proceedings, see Business and Professions Code § 809.7.

§ 809.4. Rights of parties upon completion of hearing concerning final proposed action

(a) Upon the completion of a hearing concerning a final proposed action for which a report is required to be filed under Section 805, the licentiate and the peer review body involved have the right to receive all of the following:

(1) A written decision of the trier of fact, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

(2) A written explanation of the procedure for appealing the decision, if any appellate mechanism exists.

(b) If an appellate mechanism is provided, it need not provide for de novo review, but it shall include the following minimum rights for both parties:

(1) The right to appear and respond.

(2) The right to be represented by an attorney or any other representative designated by the party.

(3) The right to receive the written decision of the appellate body.

(Added by Stats.1989, c. 336, § 5, eff. Sept. 11, 1989, operative Jan. 1, 1990.)

Application

For application of this section to peer review proceedings, see Business and Professions Code § 809.7.

§ 809.5. Immediate suspension or restriction of clinical privileges; imminent danger

(a) Notwithstanding Sections 809 to 809.4, inclusive, a peer review body may immediately suspend or restrict clinical privileges of a licentiate where the failure to take that action may result in an imminent danger to the health of any individual, provided that the licentiate is subsequently provided with the notice and hearing rights

set forth in Sections 809.1 to 809.4, inclusive, or, with respect to organizations specified in Section 809.7, with the rights specified in that section.

(b) When no person authorized by the peer review body is available to summarily suspend or restrict clinical privileges under circumstances specified in subdivision (a), the governing body of an acute care hospital, or its designee, may immediately suspend a licentiate's clinical privileges if a failure to summarily suspend those privileges is likely to result in an imminent danger to the health of any individual, provided the governing body of the acute care hospital has, before the suspension, made reasonable attempts to contact the peer review body. A suspension by the governing body of an acute care hospital which has not been ratified by the peer review body within two working days, excluding weekends and holidays, after the suspension shall terminate automatically.

(Added by Stats.1989, c. 336, § 6, eff. Sept. 11, 1989, operative Jan. 1, 1990. Amended by Stats.1990, c. 332 (A.B.2124), § 2.)

§ 809.6. Additional notice and hearing requirements; waiver

(a) The parties are bound by any additional notice and hearing provisions contained in any applicable professional society or medical staff bylaws which are not inconsistent with Sections 809.1 to 809.4, inclusive.

(b) The parties are bound by any additional notice and hearing provisions contained in any applicable agreement or contract between the licentiate and peer review body or health care entity which are not inconsistent with Sections 809.1 to 809.4, inclusive.

(c) The provisions of Sections 809.1 to 809.4, inclusive, may not be waived in any instrument specified in subdivision (a) or (b) for a final proposed action for which a report is required to be filed under Section 805.

(Added by Stats.1989, c. 336, § 7, eff. Sept. 11, 1989, operative Jan. 1, 1990.)

§ 809.7. Application of sections 809.1 to 809.4 and this section

Sections 809.1 to 809.4, inclusive, shall not apply to peer review proceedings conducted in state or county hospitals, in hospitals owned by, operated by, or licensed to the Regents of the University of California or any of its subsidiary corporations which serve as a primary teaching facility, or in health facilities which serve as the primary teaching facility for medical schools approved pursuant to Section 2084. In addition, Sections 809.1 to 809.4, inclusive, shall not apply to licentiates engaged in postgraduate medical education under the auspices of a medical school approved pursuant to Section 2084. This section shall not affect the obligation to afford due process of law to licentiates involved in peer review proceedings in these hospitals.

(Added by Stats.1989, c. 336, § 8, eff. Sept. 11, 1989, operative Jan. 1, 1990.)

§ 809.8. Judicial review

Nothing in Sections 809 to 809.7, inclusive, shall affect the availability of judicial review under Section 1094.5 of the Code of Civil Procedure nor the provisions relating to discovery and testimony in Section 1157 of the Evidence Code or Sections 1370 and 1370.1 of the Health and Safety Code.

(Added by Stats.1989, c. 336, § 9, eff. Sept. 11, 1989, operative Jan. 1, 1990.)

§ 809.9. Challenge of action taken or restriction imposed; cost of litigation; prevailing party

In any suit brought to challenge an action taken or a restriction imposed which is required to be reported pursuant to Section 805, the court shall, at the conclusion of the action, award to a substantially prevailing party the cost of the suit, including a reasonable attorney's fee, if the other party's conduct in bringing, defending, or litigating the suit was frivolous, unreasonable, without foundation, or in bad faith. For the purposes of this section, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains an award for damages or permanent injunctive or declaratory relief. For the purpose of this section, a plaintiff shall not be considered to have substantially prevailed when the plaintiff does not obtain an award of damages or permanent injunctive or declaratory relief.

(Added by Stats.1989, c. 336, § 9.5, eff. Sept. 11, 1989, operative Jan. 1, 1990.)

Chapter 5 MEDICINE

Article 12 ENFORCEMENT

§ 2225.5. Refusal to comply with court order or request for medical records; civil penalties

(a)(1) A licensee who fails or refuses to comply with a request for the medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's medical records to the board within 30 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 30th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the medical records.

(b)(1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the

release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) and shall be reported to the State Department of Health Services and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code).

(f) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(Added by Stats.1993, c. 1267 (S.B.916), § 22. Amended by Stats.1995, c. 708 (S.B.609), § 8; Stats.1998, c. 736 (S.B.1981), § 12; Stats.1998, c. 878 (S.B.2239), § 9.)

§ 2247. Licensee physical, emotional and mental condition; requirements

(a) A licensee shall meet the requirements set forth in subdivision (f) of Section 1031 of the Government Code prior to performing either of the following:

(1) An evaluation of a peace officer applicant's emotional and mental condition.

(2) An evaluation of a peace officer's fitness for duty.

(b) This section shall become operative on January 1, 2005.

(Added by Stats.2003, c. 777 (A.B.1669), § 1, operative Jan. 1, 2005.)

BUSINESS AND PROFESSIONS CODE — PSYCHOLOGISTS

Chapter 6.6 PSYCHOLOGISTS

Article 1 GENERAL PROVISIONS

§ 2900. Legislative finding and declarations

The Legislature finds and declares that practice of psychology in California affects the public health, safety, and welfare and is to be subject to regulation and control in the public interest to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

(Added by Stats.1967, c. 1677, p. 4199, § 2.)

§ 2901. Short title

This chapter shall be known and may be cited as the "Psychology Licensing Law."

(Added by Stats.1967, c. 1677, p. 4199, § 2.)

§ 2902. Definitions

As used in this chapter, unless the context clearly requires otherwise and except as in this chapter expressly otherwise provided the following definitions apply:

(a) "Licensed psychologist" means an individual to whom a license has been issued pursuant to the provisions of this chapter, which license is in force and has not been suspended or revoked.

(b) "Board" means the Board of Psychology.

(c) A person represents himself or herself to be a psychologist when the person holds himself or herself out to the public by any title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychology consultation," "psychology consultant," "psychometry," "psychometrics" or "psychometrist," "psychotherapy," "psychotherapist," "psychoanalysis," or "psychoanalyst," or when the person holds himself or herself out to be trained, experienced, or an expert in the field of psychology.

(d) "Accredited," as used with reference to academic institutions, means the University of California, the California State University, or an institution that is accredited by a national or an applicable regional accrediting agency recognized by the United States Department of Education.

(e) "Approved," as used with reference to academic institutions, means an institution having "approval to operate", as defined in Section 94718 of the Education Code.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1976, c. 1185, p. 5318, § 90; Stats.1978, c. 1161, p. 3649, § 194; Stats.1978, c. 1208, p. 3898, § 1; Stats.1979, c. 955, p. 3294, § 2; Stats.1983, c. 143, § 1; Stats.1989, c. 886, § 55; Stats.1989, c. 887, § 1; Stats.1989, c. 888, § 1.5; Stats.1995, c. 279 (A.B.1471), § 16; Stats.1995, c. 758 (A.B.446), § 4; Stats.1995, c. 91 (S.B.975), § 2; Stats.1997, c. 758 (S.B.1346), § 34; Stats.2004, c. 695 (S.B.1913), § 19.)

§ 2903. Necessity of license; practice of psychology; psychotherapy

No person may engage in the practice of psychology, or represent himself or herself to be a psychologist, without a license granted under this chapter, except as otherwise provided in this chapter. The practice of psychology is defined as rendering or offering to render for a fee to individuals, groups, organizations or the public any psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships; and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations.

The application of these principles and methods includes, but is not restricted to: diagnosis, prevention, treatment, and amelioration of psychological problems and emotional and mental disorders of individuals and groups.

Psychotherapy within the meaning of this chapter means the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes and behavior which are emotionally, intellectually, or socially ineffectual or maladjustive.

As used in this chapter, "fee" means any charge, monetary or otherwise, whether paid directly or paid on a prepaid or capitation basis by a third party, or a charge assessed by a facility, for services rendered.
(Added Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1973, c. 658, § 1; Stats.1978, c. 1208, p. 3898, § 2; Stats.2001, c. 728 (S.B.724), § 24.2.)

§ 2903.1. Biofeedback instruments

A psychologist licensed under this chapter may use biofeedback instruments which do not pierce or cut the skin to measure physical and mental functioning.
(Added by Stats.1976, c. 734, p. 1761, § 1.)

§ 2904. Practice of psychology; excluded acts

The practice of psychology shall not include prescribing drugs, performing surgery or administering electro–convulsive therapy.
(Added by Stats.1967, c. 1677, p. 4199, § 2.)

§ 2904.5. Licensed psychologist; status as health care practitioner

A psychologist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care practitioner subject to the provisions of Section 2290.5 pursuant to subdivision (b) of that section.
(Added by Stats.2003, c. 20 (A.B.116), § 3.)

§ 2905. Practice of psychology

The practice of psychology shall be as defined as in Section 2903, any existing statute in the State of California to the contrary notwithstanding.
(Added by Stats.1967, c. 1677, p. 4199, § 2.)

§ 2907. Corporate practice

Corporations shall have no professional rights, privileges, or powers, and shall not be permitted to practice psychology, nor shall the liability of any licensed psychologist be limited by a corporation.
(Added by Stats.1967, c. 1677, p. 4199, § 2.)

§ 2907.5. Psychological corporation

Nothing in Section 2907 shall be deemed to apply to the acts of a psychological corporation practicing pursuant to the Moscone–Knox Professional Corporation Act, as contained in Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code and Article 9 (commencing with Section 2995) when the psychological corporation is in compliance with (a) the Moscone–Knox Professional Corporation Act; (b) Article 9 (commencing with Section 2995); and (c) all other statutes now or hereafter enacted or adopted pertaining to such corporation and the conduct of its affairs.
(Added by Stats.1969, c. 1436, p. 2944, § 2. Amended by Stats.1973, c. 77, § 4; Stats.1980, c. 1314, p. 4554, § 11.)

§ 2908. Psychological activities; members of other professional groups

Nothing in this chapter shall be construed to prevent qualified members of other recognized professional groups licensed to practice in the State of California, such as, but not limited to, physicians, clinical social workers, educational psychologists, marriage and family therapists, optometrists, psychiatric technicians, or registered nurses, or attorneys admitted to the California State Bar, or persons utilizing hypnotic techniques by referral from persons licensed to practice medicine, dentistry or psychology, or persons utilizing hypnotic techniques which offer avocational or vocational self–improvement and do not offer therapy for emotional or mental disorders, or duly ordained members of the recognized clergy, or duly ordained religious practitioners from doing work of a psychological nature consistent with the laws governing their respective professions, provided they do not hold themselves out to the public by any title or description of services incorporating the words "psychological," "psychologist," "psychology," "psychometrist," "psychometrics," or "psychometry," or that they do not state or imply that they are licensed to practice psychology; except that persons licensed under Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 may hold themselves out to the public as licensed educational psychologists.
(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1973, c. 758, § 3; Stats.1978, c. 1208, p. 3899, § 4; Stats.1980, c. 324, p. 663, § 1; Stats.1983, c. 928, § 2; Stats.2002, c. 1013 (S.B.2026), § 10.)

§ 2909. Psychological activities and use of official titles; salaried employees of organization

Nothing in this chapter shall be construed as restricting or preventing activities of a psychological nature or the use of the official title of the position for which they were employed on the part of the following persons, provided those persons are performing those activities as part of the duties for which they were employed, are performing those activities solely within the confines of or under the jurisdiction of the organization in which they are employed and do not offer to render or render psychological services as defined in Section 2903 to the public for a fee, monetary or otherwise, over and above the salary they receive for the performance of their official duties with the organization in which they are employed:

(a) Persons who hold a valid and current credential as a school psychologist issued by the California Department of Education.

(b) Persons who hold a valid and current credential as a psychometrist issued by the California Department of Education.

(c) Persons employed in positions as psychologists or psychological assistants, or in a student counseling service, by accredited or approved colleges, junior colleges or universities; federal, state, county or municipal governmental organizations which are not primarily involved in the provision of direct health or mental health services. However, those persons may, without obtaining a license under this act, consult or disseminate their research findings and scientific information to other such accredited or approved academic institutions or governmental agencies. They may also offer lectures to the public for a fee, monetary or otherwise, without being licensed under this chapter.

(d) Persons who meet the educational requirements of subdivision (b) of Section 2914 and who have one year or more of <u>the supervised</u> professional experience * * * <u>referenced in subdivision (c) of Section 2914</u>, if they are employed by nonprofit community agencies <u>that</u> receive a minimum of 25 percent of their financial support from any federal, state, county, or municipal governmental organizations for the purpose of training and providing services. Those persons shall be registered by the agency with the board at the time of employment and shall be <u>identified in the setting as a "registered psychologist." Those persons shall be</u> exempt from this chapter for a maximum period of * * * <u>30 months</u> from the date of registration.

* * *

(Added by Stats.1981, c. 412, p. 1603, § 2, eff. Sept. 11, 1981, operative Jan. 1, 1984. Amended by Stats.1989, c. 888, § 2; Stats.1990, c. 1207 (A.B.3242), § 3; Stats.2005, c. 658 (S.B.229), § 2.)

§ 2910. Psychological activities; salaried employees of academic institutions, public schools or governmental agencies

Nothing in this chapter shall be construed to restrict or prevent activities of a psychological nature on the part of persons who are salaried employees of accredited or approved academic institutions, public schools or governmental agencies, provided:

(a) Such employees are performing such psychological activities as part of the duties for which they were hired;

(b) Such employees are performing those activities solely within the jurisdiction or confines of such organizations;

(c) Such persons do not hold themselves out to the public by any title or description of activities incorporating the words "psychology," "psychological," "psychologist," "psychometry," "psychometrics" or "psychometrist";

(d) Such persons do not offer their services to the public for a fee, monetary or otherwise;

(e) Such persons do not provide direct health or mental health services.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1979, c. 996, p. 3391, § 3.)

§ 2911. Graduate students; psychological intern; psychological trainee

Nothing in this chapter shall be construed as restricting the activities and services of a graduate student or psychological intern in psychology pursuing a course of study leading to a graduate degree in psychology at an accredited or approved college or university and working in a training program, or a postdoctoral trainee working in a postdoctoral placement overseen by the American Psychological Association (APA), the Association of Psychology Postdoctoral and Internship Centers (APPIC), or the California Psychology Internship Council (CAPIC), provided that these activities and services constitute a part of his or her supervised course of study and that those persons are designated by the title * * * "psychological intern," "psychological trainee * * *," " postdoctoral intern," or another title clearly indicating the training status appropriate to his or her level of training. The * * * aforementioned terms shall be reserved for persons enrolled in the doctoral program * * * leading to one of the degrees listed in subdivision (b) of Section 2914 at an accredited or approved college or university or in a formal postdoctoral internship overseen by APA, APPIC, or CAPIC.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.2005, c. 658 (S.B.229), § 3.)

§ 2912. Out of state practitioners

Nothing in this chapter shall be construed to restrict or prevent a person who is licensed * * * as a psychologist at the doctoral level in another state or territory of the United States or in * * * Canada from offering psychological services in this state for a period not to exceed 30 days in any calendar year.

(Added by Stats.1973, c. 757, § 2. Amended by Stats.1978, c. 1161, p. 3649, § 196; Stats.2005, c. 658 (S.B.229), § 4.)

§ 2913. Psychological assistants

A person other than a licensed psychologist may be employed by a licensed psychologist, by a licensed physician and surgeon who is board certified in psychiatry by the American Board of Psychiatry and Neurology, by a clinic which provides mental health services under contract pursuant to Section 5614 of the Welfare and Institutions Code, by a psychological corporation, by a licensed psychology clinic as defined in Section 1204.1 of the Health and Safety Code, or by a medical corporation to perform limited psychological functions provided that all of the following apply:

(a) The person is termed a "psychological assistant."

(b) The person (1) has completed a master's degree in psychology or education with the field of specialization in psychology or counseling psychology, or (2) has been admitted to candidacy for a doctoral degree in psychology or education with the field of specialization in psychology or counseling psychology, after having satisfactorily completed three or more years of postgraduate education in psychology and having passed preliminary doctoral examinations, or (3) has completed a doctoral degree which qualifies for licensure under Section 2914, in an accredited or approved university, college, or professional school located in the United States or Canada.

(c) The person is at all times under the immediate supervision, as defined in regulations adopted by the board, of a licensed psychologist, or board certified psychiatrist, who shall be responsible for insuring that the extent, kind, and quality of the psychological services he or she performs are consistent with his or her training and experience and be responsible for his or her compliance with this chapter and regulations duly adopted hereunder, including those provisions set forth in Section 2960.

(d) The licensed psychologist, board certified psychiatrist, contract clinic, psychological corporation, or medical corporation, has registered the psychological assistant with the board. The registration shall be renewed annually in accordance with regulations adopted by the board.

No licensed psychologist may register, employ, or supervise more than three psychological assistants at any given time unless specifically authorized to do so by the board. No board certified psychiatrist may register, employ, or supervise more than one psychological assistant at any given time. No contract clinic, psychological corporation, or medical corporation may employ more than 10 assistants at any one time. No contract clinic may register, employ, or provide supervision for more than one psychological assistant for each designated full–time staff psychiatrist who is qualified and supervises the psychological assistants. No psychological assistant may provide psychological services to the public for a fee, monetary or otherwise, except as an employee of a licensed psychologist, licensed physician, contract clinic, psychological corporation, or medical corporation.

(e) The psychological assistant shall comply with regulations that the board may, from time to time, duly adopt relating to the fulfillment of requirements in continuing education.

(f) No person shall practice as a psychological assistant who is found by the board to be in violation of Section 2960 and the rules and regulations duly adopted thereunder.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1970, c. 470, p. 932, § 1, eff. July 21, 1970; Stats.1973, c. 949, § 1; Stats.1978, c. 1161, p. 3649, § 197; Stats.1978, c. 1208, p. 3900, § 5; Stats.1980, c. 1314, p. 4555, § 12; Stats.1980, c. 1315, p. 4560, § 1; Stats.1981, c. 714, p. 2572, § 8; Stats.1982, c. 462, p. 1907, § 1; Stats.1982, c. 1172, p. 4188, § 1; Stats.1983, c. 207, § 1, eff. July 13, 1983; Stats.1989, c. 888, § 3.)

§ 2914. Qualification of applicants for licensure

Each applicant for licensure shall comply with all of the following requirements:

(a) Is not subject to denial of licensure under Division 1.5.

(b) Possess an earned doctorate degree (1) in psychology, (2) in educational psychology, or (3) in education with the field of specialization in counseling psychology or educational psychology. Except as provided in subdivision (g), this degree or training shall be obtained from an accredited university, college, or professional school. The board shall make the final determination as to whether a degree meets the requirements of this section.

No educational institution shall be denied recognition as an accredited academic institution solely because its program is not accredited by any professional organization of psychologists, and nothing in this chapter or in the administration of this chapter shall require the registration with the board by educational institutions of their departments of psychology or their doctoral programs in psychology.

An applicant for licensure trained in an educational institution outside the United States or Canada shall demonstrate to the satisfaction of the board that he or she possesses a doctorate degree in psychology that is equivalent to a degree earned from a regionally accredited university in the United States or Canada. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and any other documentation the board deems necessary.

(c) Have engaged for at least two years in supervised professional experience under the direction of a licensed psychologist, the specific requirements of which shall be defined by the board in its regulations, or under suitable alternative supervision as determined by the board in regulations duly adopted under this chapter, at least one year of which shall be after being awarded the doctorate in psychology. If the supervising licensed psychologist fails to provide verification to the board of the experience required by this subdivision within 30 days after being so requested by the applicant, the applicant may provide written verification directly to the board.

If the applicant sends verification directly to the board, the applicant shall file with the board a declaration of proof of service, under penalty of perjury, of the request for verification. A copy of the completed verification forms shall be provided to the supervising psychologist and the applicant shall prove to the board that a copy has been sent to the supervising psychologist by filing a declaration of proof of service under penalty of perjury, and shall file this declaration with the board when the verification forms are submitted.

Upon receipt by the board of the applicant's verification and declarations, a rebuttable presumption affecting the burden of producing evidence is created that the supervised, professional experience requirements of this subdivision have been satisfied. The supervising psychologist shall have 20 days from the day the board receives the verification and declaration to file a rebuttal with the board.

The authority provided by this subdivision for an applicant to file written verification directly shall apply only to an applicant who has acquired the experience required by this subdivision in the United States.

The board shall establish qualifications by regulation for supervising psychologists and shall review and approve applicants for this position on a case–by–case basis.

(d) Take and pass the examination required by Section 2941 unless otherwise exempted by the board under this chapter.

(e) Show by evidence satisfactory to the board that he or she has completed training in the detection and treatment of alcohol and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after September 1, 1985.

(f)(1) Show by evidence satisfactory to the board that he or she has completed coursework in spousal or partner abuse assessment, detection, and intervention. This requirement applies to applicants who began graduate training during the period commencing on January 1, 1995, and ending on December 31, 2003.

(2) An applicant who began graduate training on or after January 1, 2004, shall show by evidence satisfactory to the board that he or she has completed a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. An applicant may request an exemption from this requirement if he or she intends to practice in an area that does not include the direct provision of mental health services.

(3) Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. This requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

(g) An applicant holding a doctoral degree in psychology from an approved institution is deemed to meet the requirements of this section if all of the following are true:

(1) The approved institution offered a doctoral degree in psychology designed to prepare students for a license to practice psychology and was approved by the Bureau for Private Postsecondary and Vocational Education on or before July 1, 1999.

(2) The approved institution has not, since July 1, 1999, had a new location, as described in Section 94721 of the Education Code.

(3) The approved institution is not a franchise institution, as defined in Section 94729.3 of the Education Code.

(Added by Stats.2000, c. 625 (A.B.400), § 2. Amended by Stats.2001, c. 728 (S.B.724), § 24.4; Stats.2002, c. 481 (S.B.564), § 1; Stats.2005, c. 658 (S.B.229), § 5.)

§ 2914.1. Continuing education; geriatric pharmacology

The board shall encourage every licensed psychologist to take a continuing education course in geriatric pharmacology as a part of his or her continuing education.

(Added by Stats.1990, c. 1539 (S.B.2827), § 3.)

§ 2914.2. Continuing education in psychopharmacology and biological basis of behavior

The board shall encourage licensed psychologists to take continuing education courses in psychopharmacology and biological basis of behavior as part of their continuing education.

(Added by Stats.1998, c. 822 (S.B.983), § 1.)

§ 2914.3. Doctorate degree program curriculum; psychopharmacology courses

(a) The board shall encourage institutions that offer a doctorate degree program in psychology to include in their biobehavioral curriculum, education and training in psychopharmacology and related topics including pharmacology and clinical pharmacology.

(b) The board shall develop guidelines for the basic education and training of psychologists whose practices include patients with medical conditions and patients with mental and emotional disorders, who may require psychopharmacological treatment and whose management may require collaboration with physicians and other licensed prescribers. In developing these guidelines for training, the board shall consider, but not be limited to, all of the following:

(1) The American Psychological Association's guidelines for training in the biological bases of mental and emotional disorders.

(2) The necessary educational foundation for understanding the biochemical and physiological bases for mental disorders.

(3) Evaluation of the response to psychotropic compounds, including the effects and side effects.

(4) Competent basic practical and theoretical knowledge of neuroanatomy, neurochemistry, and neurophysiology relevant to research and clinical practice.

(5) Knowledge of the biological bases of psychopharmacology.

(6) The locus of action of psychoactive substances and mechanisms by which these substances affect brain function and other systems of the body.

(7) Knowledge of the psychopharmacology of classes of drugs commonly used to treat mental disorders.

(8) Drugs that are commonly abused that may or may not have therapeutic uses.

(9) Education of patients and significant support persons in the risks, benefits, and treatment alternatives to medication.

(10) Appropriate collaboration or consultation with physicians or other prescribers to include the assessment of the need for additional treatment that may include medication or other medical evaluation and treatment and the patient's mental capacity to consent to additional treatment to enhance both the physical and the mental status of the persons being treated.

(11) Knowledge of signs that warrant consideration for referral to a physician.

(c) This section is intended to provide for training of clinical psychologists to improve the ability of clinical psychologists to collaborate with physicians. It is not intended to provide for training psychologists to prescribe medication. Nothing in this section is intended to expand the scope of licensure of psychologists.

(Added by Stats.1998, c. 822 (S.B.983), § 2.)

§ 2915. Renewal licenses, relicensure, reinstatement to active license status; proof of continuing education; false statements; policy for exceptions; approved courses

(a) Except as provided in this section, on or after January 1, 1996, the board shall not issue any renewal license unless the applicant submits proof that he or she has completed no less than 18 hours of approved continuing education in the preceding year. On or after January 1, 1997, except as provided in this section, the board shall issue renewal licenses only to those applicants who have completed 36 hours of approved continuing education in the preceding two years.

(b) Each person renewing his or her license issued pursuant to this chapter shall submit proof of compliance with this section to the board. False statements submitted pursuant to this section shall be a violation of Section 2970.

(c) A person applying for relicensure or for reinstatement to an active license status shall certify under penalty of perjury that he or she is in compliance with this section.

(d)(1) The continuing education requirement shall include, but shall not be limited to, courses required pursuant to Sections 25 and 28. The requirement may include courses pursuant to Sections 32 and 2914.1.

(2)(A) The board shall require a licensed psychologist who began graduate study prior to January 1, 2004, to take a continuing education course during his or her first renewal period after the operative date of this section in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement.

(B) Continuing education courses taken pursuant to this paragraph shall be applied to the 36 hours of approved continuing education required under subdivision (a).

(C) A licensed psychologist whose practice does not include the direct provision of mental health services may apply to the board for an exemption from the requirements of this paragraph.

(3) Continuing education instruction approved to meet the requirements of this section shall be completed within the State of California, or shall be approved for continuing education credit by the American Psychological Association or its equivalent as approved by the board.

(e) The board may establish a policy for exceptions from the continuing education requirement of this section.

(f) The board may recognize continuing education courses that have been approved by one or more private nonprofit organizations that have at least 10 years' experience managing continuing education programs for psychologists on a statewide basis, including, but not limited to:

(1) Maintaining and managing related records and data.

(2) Monitoring and approving courses.

(g) The board shall adopt regulations as necessary for implementation of this section.

(h) A licensed psychologist shall choose continuing education instruction that is related to the assessment, diagnosis, and intervention for the client population being served or to the fields of psychology in which the psychologist intends to provide services, that may include new theoretical approaches, research, and applied techniques. Continuing education instruction shall include required courses specified in subdivision (d).

(i) A psychologist shall not practice outside his or her particular field or fields of competence as established by his or her education, training, continuing education, and experience.

(j) The administration of this section may be funded through professional license fees and continuing education provider and course approval fees, or both. The fees related to the administration of this section shall not exceed the costs of administering the corresponding provisions of this section.

(k) Continuing education credit may be approved for those licensees who serve as commissioners on any examination pursuant to Section 2947, subject to limitations established by the board.

(*l*) This section shall become operative on January 1, 2004.

(Added by Stats.2002, c. 481 (S.B.564), § 3, operative Jan. 1, 2004.)

§ 2915.5. Graduate study coursework in aging and long–term care; contact hours; program contents

(a) Any applicant for licensure as a psychologist who began graduate study on or after January 1, 2004, shall complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long–term care, which could include, but is not limited to, the biological, social, and psychological aspects of aging.

(b) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(c) In order to satisfy the coursework requirement of this section, the applicant shall submit to the board a certification from the chief academic officer of the educational institution from which the applicant graduated stating that the coursework required by this section is included within the institution's required curriculum for graduation, or within the coursework, that was completed by the applicant.

(d) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

(Added by Stats.2002, c. 541 (S.B.953), § 4.)

§ 2915.7. Continuing education coursework in aging and long–term care; license renewal; minimum number of hours; programs contents

(a) A licensee who began graduate study prior to January 1, 2004, shall complete a three–hour continuing education course in aging and long–term care during his or her first renewal period after the operative date of this section, and shall submit to the board evidence acceptable to the board of the person's satisfactory completion of that course.

(b) The course should include, but is not limited to, the biological, social, and psychological aspects of aging.

(c) Any person seeking to meet the requirements of subdivision (a) of this section may submit to the board a certificate evidencing completion of equivalent courses in aging and long–term care taken prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(d) The board may not renew an applicant's license until the applicant has met the requirements of this section.

(e) A licensee whose practice does not include the direct provision of mental health services may apply to the board for an exception to the requirements of this section.

(f) This section shall become operative on January 1, 2005.

(Added by Stats.2002, c. 541 (S.B.953), § 5. Amended by Stats.2004, c. 695 (S.B.1913), § 20, operative Jan. 1, 2005.)

§ 2916. Partial invalidity

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any of the provisions or applications of this chapter which can be given effect without such invalid provisions or application, and to this end the provisions of this chapter are declared to be severable.

(Added by Stats.1967, c. 1677, p. 4199, § 2.)

§ 2918. Confidential relations and communications; privilege; law governing

The confidential relations and communications between psychologist and client shall be privileged as provided by Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code.

(Added by Stats.1973, c. 757, § 4.)

Article 2 ADMINISTRATION

§ 2920. Board of Psychology

The Board of Psychology shall enforce and administer this chapter. The board shall consist of nine members, four of whom shall be public members.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.
(Added by Stats.1967, c. 1677, p. 4190, § 2. Amended by Stats.1971, c. 716, p. 1399, § 45; Stats.1976, c. 1188, p. 5341, § 16; Stats.1978, c. 1161, p. 3651, § 199; Stats.1978, c. 1208, p. 3901, § 7; Stats.1982, c. 676, p. 2750, § 12; Stats.1989, c. 886, § 56; Stats.1989, c. 888, § 5; Stats.1990, c. 622 (S.B.2720), § 1; Stats.1994, c. 908 (S.B.2036), § 19; Stats.1998, c. 589 (S.B.1983), § 1; Stats.2002, c. 1012 (S.B.2025), § 6, eff. Sept. 27, 2002; Stats.2005, c. 658 (S.B.229), § 6.)

§ 2920.1. Priority to protect the public

Protection of the public shall be the highest priority for the Board of Psychology in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.
(Added by Stats.2002, c. 107 (A.B.269), § 12.)

§ 2921. Tenure of members; limitation on number of terms

Each member of the board shall hold office for a term of four years, and shall serve until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs. No member may serve for more than two consecutive terms.
(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1968, c. 455, p. 1076, § 1; Stats.1973, c. 757, § 5; Stats.1989, c. 888, § 6.)

§ 2922. Appointment and qualifications of members

In appointing the members of the board, except the public members, the Governor shall use his or her judgment to select psychologists who represent, as widely as possible, the varied professional interests of psychologists in California.

The Governor shall appoint two of the public members and the five licensed members of the board qualified as provided in Section 2923. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies which occur on or after January 1, 1983.
(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1976, c. 1188, p. 5341, § 17; Stats.1982, c. 676, p. 2750, § 13; Stats.1989, c. 888, § 7; Stats.1998, c. 589 (S.B.1983), § 2.)

§ 2923. Qualifications of members

Each member of the board shall have all of the following qualifications:

(a) He or she shall be a resident of this state.

(b) Each member appointed, except the public members shall be a licensed psychologist.

The public members shall not be licentiates of the board or of any board under this division or of any board referred to in the Chiropractic Act or the Osteopathic Act.
(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1976, c. 1188, p. 5341, § 18; Stats.1989, c. 888, § 8.)

§ 2924. Removal from office; grounds

The Governor has power to remove from office any member of the board for neglect of any duty required by this chapter, for incompetency, or for unprofessional conduct.
(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1989, c. 888, § 9.)

§ 2925. Election of officers

The board shall elect annually a president and vice president from among its members.
(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1978, c. 1208, p. 3902, § 8; Stats.1989, c. 888, § 10; Stats.1998, c. 589 (S.B.1983), § 3.)

§ 2926. Meetings

The board shall hold at least one regular meeting each year. Additional meetings may be held upon call of the chairman or at the written request of any two members of the board.
(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1989, c. 888, § 11.)

§ 2927. Quorum

Five members of the board shall at all times constitute a quorum.
(Formerly § 2932, added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1989, c. 888, § 16.
Renumbered § 2927 and amended by Stats.1994, c. 26 (A.B.1807), § 69, eff. March 30, 1994.)

§ 2927.5. Notice of regular meetings; publication

Notice of each regular meeting of the board shall be given in accordance with the Bagley–Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).
(Added by Stats.1973, c. 757, § 6. Amended by Stats.1994, c. 26 (A.B.1807), § 66, eff. March 30, 1994.)

§ 2928. Duties of board

The board shall administer and enforce this chapter.
(Added by Stats.1967 c. 1677, p. 4199, § 2. Amended by Stats.1989, c. 888, § 12; Stats.1997, c. 758 (S.B.1346), § 35.)

§ 2929. Seal

The board shall adopt a seal, which shall be affixed to all licenses issued by the board.
(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1989, c. 888, § 13; Stats.1997, c. 758 (S.B.1346), § 36.)

§ 2930. Rules and regulations

The board shall from time to time adopt rules and regulations as may be necessary to effectuate this chapter. In adopting rules and regulations the board shall comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats. 1984, c. 144, § 12; Stats.1989, c. 888, § 14.)

§ 2930.5. Fictitious–name permits; issuance; revocation or suspension; delegation of authority

(a) Any psychologist, who as a sole proprietor, or in a partnership, group, or professional corporation, desires to practice under any name that would otherwise be a violation of subdivision (r) of Section 2960 may practice under that name if the proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious–name permit issued by the committee under this section.

(b) The committee shall issue a fictitious–name permit authorizing the holder thereof to use the name specified in the permit in connection with his, her, or its practice if the committee finds to its satisfaction that:

(1) The applicant or applicants or shareholders of the professional corporation hold valid and current licenses and no charges of unprofessional conduct are pending against any such licensed person.

(2) The place, or portion thereof, in which the applicant's or applicants' practice, is owned or leased by the applicant or applicants.

(3) The professional practice of the applicant or applicants is wholly owned and entirely controlled by the applicant or applicants.

(4) The name under which the applicant or applicants propose to practice contains one of the following designations: "psychology group" or "psychology clinic."

(c) Fictitious–name permits issued by the committee shall be subject to Article 7 (commencing with Section 2980) pertaining to renewal of licenses.

(d) The committee may revoke or suspend any permit issued if it finds that the holder or holders of the permit are not in compliance with this section or any regulations adopted pursuant to this section. A proceeding to revoke or suspend a fictitious–name permit shall be conducted in accordance with Section 2965.

(e) The committee may also proceed to revoke the fictitious–name permit of a licensee whose license has been revoked, but no proceeding may be commenced unless and until the charges of unprofessional conduct against the licensee have resulted in revocation of the license.

(f) The committee may delegate to the executive director, or to another official of the board, its authority to review and approve applications for fictitious–name permits and to issue those permits.

(Added by Stats.1988, c. 800, § 1. Amended by Stats.1992, c. 1099 (A.B.3034), § 1.)

§ 2931. Examination of qualifications of applicants

The board shall examine and pass upon the qualifications of the applicants for a license as provided by this chapter.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1989, c. 888, § 15.)

§ 2933. Personnel; expenditures; contributionsz

Except as provided by Section 159.5, the board shall employ and shall make available to the board within the limits of the funds received by the board all personnel necessary to carry out this chapter. The board may employ, exempt from the State Civil Service Act, an executive officer to the Board of Psychology. The board shall make all expenditures to carry out this chapter. The board may accept contributions to effectuate the purposes of this chapter.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1971, c. 716, p. 1399, § 46; Stats.1974, c. 1044, p. 2253, § 32.6, eff. Sept. 23, 1974; Stats. 1984, c. 47, § 18, eff. March 21, 1984; Stats.1989, c. 888, § 17; Stats.1994, c. 908 (S.B.2036), § 20; Stats.1997, c. 758 (S.B.1346), § 37; Stats.1998, c. 589 (S.B.1983), § 4; Stats.2002, c. 1012 (S.B.2025), § 7, eff. Sept. 27, 2002; Stats.2005, c. 658 (S.B.229), § 7.)

§ 2934. Geographical directory of licensed psychologists

Notwithstanding Section 112, the board may issue, biennially, a current geographical directory of licensed psychologists. The directory may be sent to licensees and to other interested parties at cost.

(Added by Stats.1982, c. 462, p. 1908, § 2. Amended by Stats.1989, c. 888, § 18.)

§ 2935. Compensation and expenses of board members

Each member of the board shall receive a per diem and expenses as provided in Section 103.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1989, c. 888, § 19.)

§ 2936. Consumer and professional education program; standards of ethical conduct; notice to consumers

The board shall adopt a program of consumer and professional education in matters relevant to the ethical practice of psychology. The board shall establish as its standards of ethical conduct relating to the practice of psychology, the * * * "Ethical Principles and Code of Conduct" published by the American Psychological Association (APA). Those standards shall be applied by the board as the accepted standard of care in all licensing examination development and in all board enforcement policies and disciplinary case evaluations.

To facilitate consumers in receiving appropriate psychological services, all licensees and registrants shall be required to post, in a conspicuous location in their principal psychological business office, a notice which reads as follows:PB1 "NOTICE TO CONSUMERS: The Department of Consumer Affair's Board of Psychology receives and responds to questions and complaints regarding the practice of psychology. If you have questions or complaints, you may contact the board on the Internet at www.psychboard.ca.gov, by calling 1–866–503–3221, or by writing to the following address:PB2 Board of PsychologyPB2 1422 Howe Avenue, Suite 22PB2 Sacramento, California 95825–3236"

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1978, c. 1208, p. 3902, § 10.3; Stats.1989, c. 886, § 57; Stats.1989, c. 888, § 20; Stats.1991, c. 1091 (A.B.1487), § 4; Stats.1998, c. 589 (S.B.1983), § 5; Stats.2004, c. 695 (S.B.1913), § 21; Stats.2005, c. 658 (S.B.229), § 8.)

Article 3 LICENSE

§ 2940. Application; form; manner; fee

Each person desiring to obtain a license from the board shall make application to the board. The application shall be made upon a form and shall be made in a manner as the board prescribes in regulations duly adopted under this chapter.

The application shall be accompanied by the application fee prescribed by Section 2949.[1] This fee shall not be refunded by the board.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1989, c. 888, § 21; Stats.1997, c. 758 (S.B.1346), § 38.)

[1]Renumbered Business and Professions Code § 2987.

§ 2941. Examination; time for payment of fee

Each applicant for a psychology license shall be examined by the board, and shall pay to the board, at least 30 days prior to the date of examination, the examination fee prescribed by Section 2987, which fee shall not be refunded by the board.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1978, c. 1208, p. 3902, § 10.5; Stats.1989, c. 888, § 22; Stats.1997, c. 758 (S.B.1346), § 39.)

§ 2942. Examination; method, time and place; passing grade; uniform system

The board may examine by written or computer–assisted examination or by both. All aspects of the examination shall be in compliance with Section 139. The examination shall be * * * available for administration at least twice a year at the time and place and under supervision as the board may determine. The passing grades for the * * * examinations shall be established by the board in regulations and shall be based on psychometrically sound principles of establishing minimum qualifications and levels of competency.

Examinations for a psychologist's license may be conducted by the board under a uniform examination system, and for that purpose the board may make arrangements with organizations furnishing examination material as may in its discretion be desirable.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1978, c. 1208, p. 3903, § 12; Stats.1989, c. 888, § 23; Stats.1998, c. 589 (S.B.1983), § 6; Stats.2005, c. 658 (S.B.229), § 9.)

§ 2943. Scope of examination

The board may examine for knowledge in whatever theoretical or applied fields in psychology as it deems appropriate. It may examine the candidate with regard to his or her professional skills and his or her judgment in the utilization of psychological techniques and methods.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1989, c. 888, § 24.)

§ 2944. Grading examination; retention of papers; exception

The board shall grade the written examination and keep the written examination papers for at least one year, unless a uniform examination is conducted pursuant to Section 2942.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1978, c. 1208, p. 3903, § 13; Stats.1989, c. 888, § 25.)

§ 2945. Transcript or recording of oral examination

The board shall keep an accurate transcription or electronic recording of the oral examinations and keep a transcription or recording as a part of its records for at least one year following the date of examination.

(Added by Stats.1973, c. 757, § 8. Amended by Stats.1989, c. 888, § 26.)

§ 2946. Licensees of other states; waiver of all or parts of examination

The board shall grant a license to any person who passes the * * * board's supplemental licensing examination and, at the time of application, has been licensed for at least five years by a psychology licensing authority in another state or Canadian province if the requirements for obtaining a certificate or license in that state or province were substantially equivalent to the requirements of this chapter.

A psychologist certified or licensed in another state or province and who has made application to the board for a license in this state may perform activities and services of a psychological nature without a valid license for a period not to exceed 180 calendar days from the time of submitting his or her application or from the commencement of residency in this state, whichever first occurs.

The board at its discretion may waive * * * the * * * examinations, when in the judgment of the board the applicant has already demonstrated competence in areas covered by * * * the examinations. The board at its discretion may waive the examinations for diplomates of the American Board of Professional Psychology.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1979, c. 955, p. 3295, § 3; Stats.1989, c. 888, § 27; Stats.1990, c. 622 (S.B.2720), § 2; Stats.1998, c. 589 (S.B.1983), § 7; Stats.2000, c. 836 (S.B.1554), § 19; Stats.2005, c. 658 (S.B.229), § 11.)

§ 2947. Commissioners on examination; occasional professional commissioners; appointment; duties

The board may appoint qualified persons to give the whole or any portion of any examination provided for in this chapter, who shall be designated as commissioners on examination. A commissioner on examination need not be a member of the board but he or she shall have the same qualifications as a member of the board, including those set forth in Chapter 6 (commencing with Section 450) of Division 1. The board may also appoint occasional professional commissioners for short–term specified periods to assist in its nonpolicy workload.

Public commissioners may examine and evaluate candidates in areas of knowledge such as the law, ethics, and awareness of community resources.

(Added by Stats.1978, c. 1208, p. 3903, § 13.2. Amended by Stats.1982, c. 462, p. 1908, § 3; Stats.1989, c. 888, § 28.)

§ 2948. Issuance of license

The board shall issue a license to all applicants who meet the requirements of this chapter and who pay to the board the initial license fee provided in Section 2987.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1989, c. 888, § 29; Stats.1990, c. 622 (S.B.2720), § 3; Stats.1997, c. 758 (S.B.1346), § 40.)

Article 4 DENIAL, SUSPENSION AND REVOCATION

§ 2960. Grounds

The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) Conviction of a crime substantially related to the qualifications, functions or duties of a psychologist or psychological assistant.

(b) Use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug, or any alcoholic beverage to an extent or in a manner dangerous to himself or herself, any other person, or the public, or to an extent that this use impairs his or her ability to perform the work of a psychologist with safety to the public.

(c) Fraudulently or neglectfully misrepresenting the type or status of license or registration actually held.

(d) Impersonating another person holding a psychology license or allowing another person to use his or her license or registration.

(e) Using fraud or deception in applying for a license or registration or in passing the examination provided for in this chapter.

(f) Paying, or offering to pay, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of clients.

(g) Violating Section 17500.

(h) Willful, unauthorized communication of information received in professional confidence.

(i) Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.

(j) Being grossly negligent in the practice of his or her profession.

(k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.

(*l*) The aiding or abetting of any person to engage in the unlawful practice of psychology.

(m) The suspension, revocation or imposition of probationary conditions by another state or country of a license or certificate to practice psychology or as a psychological assistant issued by that state or country to a person also holding a license or registration issued under this chapter if the act for which the disciplinary action was taken constitutes a violation of this section.

(n) The commission of any dishonest, corrupt, or fraudulent act.

(*o*) Any act of sexual abuse, or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct that is substantially related to the qualifications, functions or duties of a psychologist or psychological assistant or registered psychologist.

(p) Functioning outside of his or her particular field or fields of competence as established by his or her education, training, and experience.

(q) Willful failure to submit, on behalf of an applicant for licensure, verification of supervised experience to the board.

(r) Repeated acts of negligence.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1970, c. 1318, p. 2456, § 3; Stats.1973, c. 757, § 9; Stats.1977, c. 509, p. 1643, § 5; Stats.1978, c. 1161, p. 3652, § 204; Stats.1978, c. 1208, p. 3898, § 15; Stats.1979, c. 955, p. 3295, § 4; Stats.1982, c. 462, p. 1909, § 4; Stats. 1984, c. 1635, § 6; Stats.1985, c. 990, § 2, eff. Sept. 26, 1985; Stats.1988, c. 800, § 2; Stats.1989, c. 888, § 30; Stats.1992, c. 1099 (A.B.3034), § 2; Stats.1994, c. 26 (A.B.1807), § 76, eff. March 30, 1994; Stats.1994, c. 1275 (S.B.2101), § 21; Stats.1998, c. 879 (S.B.2238), § 2; Stats.1999, c. 655 (S.B.1308), § 43; Stats.2000, c. 836 (S.B.1554), § 20.)

§ 2960.05. Limitations period

(a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven–year limitations period provided for by subdivision (a) and the 10–year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

(Added by Stats.1999, c. 459 (S.B.809), § 1. Amended by Stats.2001, c. 617 (A.B.1616), § 2.)

§ 2960.1. Decision containing finding that licensee or registrant engaged in sexual contact with patient or former patient; order of revocation

Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 728, when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

(Added by Stats.1994, c. 1274 (S.B.2039), § 1.8. Amended by Stats.1998, c. 879 (S.B.2238), § 3.)

§ 2960.2. Licensee physical, emotional and mental condition; requirements

(a) A licensee shall meet the requirements set forth in subdivision (f) of Section 1031 of the Government Code prior to performing either of the following:

(1) An evaluation of a peace officer applicant's emotional and mental condition.

(2) An evaluation of a peace officer's fitness for duty.

(b) This section shall become operative on January 1, 2005.

(Added by Stats.2003, c. 777 (A.B.1669), § 2, operative Jan. 1, 2005.)

§ 2960.5. Mental illness or chemical dependency; grounds

The board may refuse to issue any registration or license whenever it appears that an applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 shall apply to any denial of a license or registration pursuant to this section.

(Added by Stats.1992, c. 384 (S.B.1773), § 1.)

§ 2960.6. Disciplinary action by foreign state; disciplinary action by a healing arts board; grounds

The board may deny any application for, or may suspend or revoke a license or registration issued under this chapter for, any of the following:

(a) The revocation, suspension, or other disciplinary action imposed by another state or country on a license, certificate, or registration issued by that state or country to practice psychology shall constitute grounds for disciplinary action for unprofessional conduct against that licensee or registrant in this state. A certified copy of the decision or judgment of the other state or country shall be conclusive evidence of that action.

(b) The revocation, suspension, or other disciplinary action by any board established in this division, or the equivalent action of another state's or country's licensing agency, of the license of a healing arts practitioner shall constitute grounds for disciplinary action against that licensee or registrant under this chapter. The grounds for the action shall be substantially related to the qualifications, functions, or duties of a psychologist or psychological assistant. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(Added by Stats.1992, c. 384 (S.B.1773), § 2. Amended by Stats.1994, c. 1275 (S.B.2101), § 22.)

§ 2961. Manner of discipline

The board may deny an application for, or issue subject to terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license or registration after a hearing as provided in Section 2965.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1978, c. 1208, p. 3904, § 16; Stats.1986, c. 1163, § 1; Stats.1989, c. 888, § 31.)

§ 2962. Reinstatement; modification of penalty; petition; examination

(a) A person whose license or registration has been revoked, suspended, or surrendered, or who has been placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license revoked or surrendered.

(2) At least two years for early termination of probation of three years or more.

(3) At least two years for modification of a condition of probation.

(4) At least one year for early termination of probation of less than three years.

(b) The board may require an examination for that reinstatement.

(c) Notwithstanding Section 489, a person whose application for a license or registration has been denied by the board, for violations of Division 1.5 (commencing with Section 475) of this chapter, may reapply to the board for a license or registration only after a period of three years has elapsed from the date of the denial.

(Added by Stats.1994, c. 1275 (S.B.2101), § 24. Amended by Stats.2000, c. 836 (S.B.1554), § 21.)

§ 2963. Conviction; suspension, revocation or refusal to issue license; effect of probation

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge which is substantially related to the qualifications, functions and duties of a psychologist or psychological assistant is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1978, c. 1161, p. 3653, § 205; Stats.1978, c. 1208, p. 3905, § 17; Stats.1986, c. 1163, § 2; Stats.1989, c. 888, § 33.)

§ 2964. Reports of license revocations or restorations

Whenever the board orders a license revoked for cause, with the exception of nonpayment of fees, or restores a license, these facts shall be reported to all other state psychology licensing boards.

(Added by Stats.1982, c. 462, p. 1910, § 5. Amended by Stats.1989, c. 888, § 34.)

§ 2964.3. Sex offender; eligibility

Any person required to register as a sex offender pursuant to Section 290 of the Penal Code, is not eligible for licensure or registration by the board.

(Added by Stats.1998, c. 589 (S.B.1983), § 8.)

§ 2964.5. Additional training, examination, and fee following probation or license suspension

The board at its discretion may require any licensee placed on probation or whose license is suspended, to obtain additional professional training, to pass an examination upon the completion of that training, and to pay the necessary examination fee. The examination may be written or oral or both, and may include a practical or clinical examination.

(Added by Stats.1982, c. 462, p. 1910, § 6. Amended by Stats.1991, c. 1091 (A.B.1487), § 5.)

§ 2964.6. Probation terms; payment of monitoring costs

An administrative disciplinary decision that imposes terms of probation may include, among other things, a requirement that the licensee who is being placed on probation pay the monetary costs associated with monitoring the probation.

(Added by Stats.1995, c. 708 (S.B.609), § 12.)

§ 2965. Conduct of proceedings

The proceedings under this article shall be conducted by the board in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1989, c. 888, § 35.)

§ 2966. Felony conviction; incarceration; determination of suspension; hearing

(a) A psychologist's license shall be suspended automatically during any time that the holder of the license is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the psychologist has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the psychologist of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in this section.

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing it is determined therefrom that the felony of which the licensee was convicted was substantially related to the qualifications, functions, or duties of a psychologist, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board. The issue of substantial relationship shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board.

(c) Notwithstanding subdivision (b), a conviction of any crime referred to in Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a psychologist and no hearing shall be held on this issue. Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the psychology profession.

(d)(1) Discipline or the denial of the license may be ordered in accordance with Section 2961, or the board may order the denial of the license when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. The hearing shall not be commenced until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in this section at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a psychologist. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in the conviction, including a transcript of the testimony therein, may be received in evidence.

(Added by Stats.1998, c. 589 (S.B.1983), § 9.)

§ 2969. Refusal to comply with request for medical records of patient; civil penalty; written authorization; court order

(a)(1) A licensee who fails or refuses to comply with a request for the medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's medical records to the board within 30 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 30th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the medical records.

(b)(1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of

records to the board, shall be subject to a civil penalty, payable to the board, of not to exceed five thousand dollars ($5,000). The amount of the penalty shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall be subject to a civil penalty, payable to the board, of not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000) and shall be reported to the State Department of Health Services and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) The imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code.

(f) For purposes of this section, "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(Added by Stats.2000, c. 836 (S.B.1554), § 22.)

Article 5 PENALTIES

§ 2970. Violation; offense; punishment

Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand dollars ($2,000), or by both.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1982, c. 462, p. 1910, § 7; Stats.1983, c. 1092, § 12, eff. Sept. 27, 1983, operative Jan. 1, 1984.)

§ 2971. Injunction or order restraining violations

Whenever any person other than a licensed psychologist has engaged in any act or practice that constitutes an offense against this chapter, the superior court of any county, on application of the board, may issue an injunction or other appropriate order restraining that conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7, Part 2 of the Code of Civil Procedure, except that it shall be presumed that there is no adequate remedy at law, and that irreparable damage will occur if the continued violation is not restrained or enjoined. On the written request of the board, or on its own motion, the board may commence action in the superior court under this section.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1978, c. 1161, p. 3653, § 206; Stats.1982, c. 517, p. 2305, § 10; Stats.1982, c. 462, p. 1910, § 8; Stats.1989, c. 888, § 36; Stats.1995, c. 279 (A.B.1471), § 17; Stats.1997, c. 758 (S.B.1346), § 41.)

Article 7 REVENUE

§ 2980. Psychology Fund; reports; deposits

There is in the State Treasury the Psychology Fund. The board shall report to the Controller at the beginning of each calendar month, for the month preceding, the amount and source of all revenue received by it, pursuant to this chapter, and shall pay the entire amount thereof to the Treasurer for deposit into that fund. All revenue received by the board from fees authorized to be charged relating to the practice of psychology shall be deposited into that fund as provided in this section.

(Added by Stats.1980, c. 1313, p. 4518, § 9.2, operative July 1, 1981. Amended by Stats.1989, c. 886, § 58; Stats.1989, c. 888, § 37; Stats.1990, c. 622 (S.B.2720), § 4; Stats.1997, c. 758 (S.B.1346), § 42.)

§ 2981. Use of funds

The money in the Psychology Fund * * * shall be used for the administration of this chapter * * *.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1978, c. 1161, p. 3635, § 208; Stats.1978, c. 1208, p. 3906, § 23; Stats.1980, c. 1313, p. 4519, § 9.3, operative July 1, 1981; Stats.2005, c. 74 (A.B.139), § 9, eff. July 19, 2005.)

§ 2982. Expiration of licenses; renewal

All licenses expire and become invalid at 12 midnight on the last day of February, 1980, and thereafter shall expire at 12 midnight of the legal birth date of the licensee during the second year of a two–year term, if not renewed.

The board shall establish by regulation procedures for the administration of the birth date renewal program, including but not limited to, the establishment of a pro rata formula for the payments of fees by licentiates affected by the implementation of that program and the establishment of a system of staggered license application dates such that a relatively equal number of licenses expire annually.

To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form provided by the board, accompanied by the prescribed renewal fee.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1968, c. 455, p. 1076, § 2; Stats.1969, c. 53, p. 173, § 2; Stats.1973, c. 757, § 10; Stats.1978, c. 1208, p. 3906, § 23.3; Stats.1989, c. 888, § 38.)

§ 2983. Initial license fee; waiver

Every person to whom a license is issued * * * shall, as a condition precedent to its issuance, and in addition to any application, examination or other fee, pay the prescribed initial license fee * * *.

(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1978, c. 1208, p. 3907, § 23.4; Stats.1989, c. 888, § 39; Stats.2005, c. 658 (S.B.229), § 12.)

§ 2984. Time for renewal; renewal and delinquency fees; licenses under prior law

Except as provided in Section 2985, a license that has expired may be renewed at any time within three years after its expiration on filing of an application for renewal on a form prescribed by the board and payment of all accrued and unpaid renewal fees. If the license is renewed after its expiration, the licensee, as a condition precedent to renewal, shall also pay the prescribed delinquency fee, if any. Renewal under this section shall be effective on the date on which the application is filed, on the date on which all renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever

last occurs. If so renewed, the license shall continue in effect through the expiration date provided in Section 2982 which next occurs after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.
(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1978, c. 1161, p. 3653, § 209; Stats.1978, c. 1208, p. 3907, § 24; Stats.1989, c. 888, § 40; Stats.1994, c. 26 (A.B.1807), § 80, eff. March 30, 1994; Stats.1997, c. 758 (S.B.1346), § 43; Stats.1998, c. 970 (A.B.2802), § 12.5; Stats.2001, c. 435 (S.B.349), § 8.)

§ 2985. Renewal of suspended license; reinstatement of revoked license; fee

A suspended license is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the licensee, while the license remains suspended, and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

A license revoked on disciplinary grounds is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition to reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.
(Added by Stats.1967, c. 1677, p. 4199, § 2.)

§ 2986. Renewal time limitation; requirements for new license; examination fee waiver or refund

A person who fails to renew his or her license within the three years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter, but that person may apply for and obtain a new license if he or she meets the requirements of this chapter provided that he or she:

(a) Has not committed any acts or crimes constituting grounds for denial of licensure.

(b) Establishes to the satisfaction of the board that with due regard for the public interest, he or she is qualified to practice psychology.

(c) Pays all of the fees that would be required if application for licensure was being made for the first time.

The board may provide for the waiver or refund of all or any part of an examination fee in those cases in which a license is issued without examination pursuant to this section.
(Added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1982, c. 462, p. 1910, § 9; Stats.1989, c. 888, § 41; Stats.1994, c. 26 (A.B.1807), § 81, eff. March 30, 1994.)

§ 2987. Fee schedule

The amount of the fees prescribed by this chapter shall be determined by the board, and shall be as follows:

(a) The application fee for a psychologist shall not be more than fifty dollars ($50).

(b) * * * The examination and reexamination fees for the * * * examinations shall be the actual cost to the board of developing, purchasing, and grading of each examination, plus the actual cost to the board of administering each examination.

(c) The initial license fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the license is issued * * *.

(d) The biennial renewal fee for a psychologist shall be four hundred dollars ($400) * * *. The board may increase the renewal fee to an amount not to exceed five hundred dollars ($500).

(e) The application fee for registration and supervision of a psychological assistant by a supervisor under Section 2913, which is payable by that supervisor, shall not be more than seventy–five dollars ($75).

(f) The annual renewal fee for registration of a psychological assistant shall not be more than seventy–five dollars ($75).

(g) The duplicate license or registration fee is five dollars ($5).

(h) The delinquency fee is twenty–five dollars ($25).

(i) The endorsement fee is five dollars ($5).

Notwithstanding any other provision of law, the board may reduce any fee prescribed by this section, when, in its discretion, the board deems it administratively appropriate.
(Formerly § 2949, added by Stats.1967, c. 1677, p. 4199, § 2. Amended by Stats.1973, c. 659, p. 1212, § 1. Renumbered § 2987 and amended by Stats.1978, c. 1161, p. 3651, § 202. Amended by Stats.1978, c. 1208, p. 3903, § 13.4; Stats.1988, c. 929, § 1; Stats.1989, c. 886, § 59; Stats.1989, c. 888, § 42; Stats.1990, c. 622 (S.B.2720), § 5; Stats.1992, c. 1289 (A.B.2743), § 25; Stats.1994, c. 26 (A.B.1807), § 82, eff. March 30, 1994; Stats.2005, c. 658 (S.B.229), § 13.)

§ 2987.2. Additional fees

In addition to the fees charged pursuant to Section 2987 for the biennial renewal of a license, the board shall collect an additional fee of ten dollars ($10) at the time of renewal. The board shall transfer this amount to the Controller who shall deposit the funds in the Mental Health Practitioner Education Fund.
(Added by Stats.2003, c. 437 (A.B.938), § 2.)

§ 2987.3. Fictitious–name permits; initial, renewal, and delinquency fees

The following fees apply to fictitious–name permits issued under Section 2930.5.

(a) The initial permit fee is an amount equal to the renewal fee in effect at the beginning of the current renewal cycle. If the permit will expire less than one year after its issuance, then the initial permit fee is an amount equal to 50 percent of the fee in effect at the beginning of the current renewal cycle.

(b) The biennial renewal fee shall be fixed by the committee at an amount not to exceed fifty dollars ($50). The amount of this fee shall not exceed the actual cost of issuing a fictitious–name permit.

(c) The delinquency fee is twenty dollars ($20).
(Added by Stats.1988, c. 800, § 3.)

§ 2987.5. Renewal fee; exemption from payment

Every person licensed under this chapter is exempt from the payment of the renewal fee in any one of the following instances:

While engaged in full–time active service in the Army, Navy, Air Force or Marines, or in the United States Public Health Service, or while a volunteer in the Peace Corps or Vista.

Every person exempted from the payment of the renewal fee by this section shall not engage in any private practice and shall become liable for the fee for the current renewal period upon the completion of his or her period of full–time active service and shall have a period of 60 days after becoming liable within which to pay the fee before the delinquency fee becomes applicable. Any person who completes his or her period of full–time active service within 60 days of the end of a renewal period is exempt from the payment of the renewal fee for that period.

The time spent in that full–time active service or full–time training and active service shall not be included in the computation of the three–year period for renewal of a license provided in Section 2986.

The exemption provided by this section shall not be applicable if the person engages in any practice for compensation other than full–time service in the Army, Navy, Air Force or Marines or in the United States Public Health Service or the Peace Corps or Vista.
(Added by Stats.1978, c. 1208, p. 3907, § 24.3. Amended by Stats.1996, c. 829 (A.B.3473), § 71.)

§ 2988. Inactive status; application; fee; continuing education; placement on active status

A licensed psychologist who for reasons, including, but not limited to, retirement, ill health, or absence from the state, is not engaged in the practice of psychology, may apply to the board to request that his or her license be placed on an inactive status. A licensed psychologist who holds an inactive license shall pay a biennial renewal fee, fixed

by the board, of no more than forty dollars ($40). A psychologist holding an inactive license shall be exempt from continuing education requirements specified in Section 2915, but shall otherwise be subject to this chapter and shall not engage in the practice of psychology in this state. Licensees on inactive status who have not committed any acts or crimes constituting grounds for denial of licensure and have completed the continuing education requirements specified in Section 2915 may, upon their request have their license to practice psychology placed on active status.
(Added by Stats.1982, c. 462, p. 1911, § 10. Amended by Stats.1989, c. 888, § 43; Stats.1992, c. 260 (S.B.774), § 3; Stats.2005, c. 658 (S.B.229), § 14.)

§ 2989. Fixing fees by regulation
The fees in this article shall be fixed by the board and shall be set forth with the regulations which are duly adopted under this chapter.
(Formerly § 2950, added by Stats.1967, c. 1677, p. 4199, § 2. Renumbered § 2989 and amended by Stats.1978, c. 1208, p. 3904, § 14; Stats.1989, c. 888, § 44.)

Article 9 PSYCHOLOGICAL CORPORATIONS

§ 2995. Corporate status; conditions; regulatory agency
A psychological corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are psychologists, podiatrists, registered nurses, optometrists, marriage and family therapists, licensed clinical social workers, chiropractors, acupuncturists, or physicians are in compliance with the Moscone–Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs.
(Added by Stats.1980, c. 1314, p. 4556, § 15. Amended by Stats.1981, c. 621, p. 2372, § 3; Stats.1989, c. 886, § 60; Stats.1989, c. 888, § 45; Stats.1990, c. 622 (S.B.2720), § 6; Stats.2000, c. 836 (S.B.1554), § 23; Stats.2001, c. 159 (S.B.662), § 10.)

§ 2996. Unprofessional conduct; violations
It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate, any provision or term of this article, the Moscone–Knox Professional Corporation Act, [1] or any regulations duly adopted under those laws.
(Added by Stats.1980, c. 1314, p. 4556, § 15.)
[1]Corporations Code § 13400 et seq.

§ 2996.1. Unprofessional conduct; conduct of practice
A psychological corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such statutes and regulations to the same extent as a person licensed under this chapter.
(Added by Stats.1980, c. 1314, p. 4556, § 15.)

§ 2996.2. Income; disqualified shareholder
The income of a psychological corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined in Section 13401 of the Corporations Code, shall not in any manner accrue to the benefit of such shareholder or his or her shares in the psychological corporation.
(Added by Stats.1980, c. 1314, p. 4556, § 15.)

§ 2997. Shareholders, directors and officers; license requirements
Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each shareholder, director and officer of a psychological corporation, except an assistant secretary and an assistant treasurer, shall be a licensed person as defined in Section 13401 of the Corporations Code.
(Added by Stats.1980, c. 1314, p. 4556, § 15.)

§ 2998. Name
The name of a psychological corporation and any name or names under which it may render professional services shall contain one of the words specified in subdivision (c) of Section 2902, and wording or abbreviations denoting corporate existence.
(Added by Stats.1980, c. 1314, p. 4557, § 15.)

§ 2999. Regulations
The board may adopt and enforce regulations to carry out the purposes and objectives of this article, including regulations requiring (a) that the bylaws of a psychological corporation shall include a provision whereby the capital stock of that corporation owned by a disqualified person, as defined in Section 13401 of the Corporations Code, or a deceased person, shall be sold to the corporation or to the remaining shareholders of that corporation within any time as those regulations may provide, and (b) that a psychological corporation shall provide adequate security by insurance or otherwise for claims against it by its patients or clients arising out of the rendering of professional services.
(Added by Stats.1980, c. 1314, p. 4557, § 15. Amended by Stats.1989, c. 888, § 46.)

BUSINESS AND PROFESSIONS CODE — PHARMACY

Chapter 9 PHARMACY

Article 7 PHARMACIES

§ 4115. Pharmacy technicians; nondiscretionary tasks; direct supervision of pharmacists; registration; ratios
(a) * * * A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of * * * a pharmacist.
(b) This section does not authorize the performance of any tasks specified in subdivision (a) by a pharmacy technician without a pharmacist on duty * * *.
(c) This section does not authorize a pharmacy technician to perform any act requiring the exercise of professional judgment by a pharmacist.
(d) The board shall adopt regulations to specify tasks pursuant to subdivision (a) that a pharmacy technician may perform under the * * * supervision * * * of a pharmacist. Any pharmacy that employs a pharmacy technician * * * shall do so in conformity with the regulations adopted by the board.
(e) * * * No person shall act as a pharmacy technician without first being * * * licensed by the board as a pharmacy technician * * *.
* * *
(f)(1) A pharmacy with only one pharmacist shall have no more than one pharmacy technician performing the tasks specified in subdivision (a). The ratio of pharmacy technicians performing the

tasks specified in subdivision (a) to any additional pharmacist shall not exceed 2:1, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117. This ratio is applicable to all practice settings, except for an inpatient of a licensed health facility, a patient of a licensed home health agency, as specified in paragraph (2), an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, and for a person receiving treatment in a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

(2) The board may adopt regulations establishing the ratio of pharmacy technicians performing the tasks specified in subdivision (a) to pharmacists applicable to the filling of prescriptions of an inpatient of a licensed health facility and for a patient of a licensed home health agency. Any ratio established by the board pursuant to this subdivision shall allow, at a minimum, at least one pharmacy technician for a single pharmacist in a pharmacy and two pharmacy technicians for each additional pharmacist, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117.

(3) A pharmacist scheduled to supervise a second pharmacy technician may refuse to supervise a second pharmacy technician if the pharmacist determines, in the exercise of his or her professional judgment, that permitting the second pharmacy technician to be on duty would interfere with the effective performance of the pharmacist's responsibilities under this chapter. A pharmacist assigned to supervise a second pharmacy technician shall notify the pharmacist in charge in writing of his or her determination, specifying the circumstances of concern with respect to the pharmacy or the pharmacy technician that have led to the determination, within a reasonable period, but not to exceed 24 hours, after the posting of the relevant schedule. No entity employing a pharmacist may discharge, discipline, or otherwise discriminate against any pharmacist in the terms and conditions of employment for exercising or attempting to exercise in good faith the right established pursuant to this paragraph.

(g) Notwithstanding subdivisions (a) and (b) * * *, the board shall by regulation establish conditions to permit the temporary absence of a pharmacist for breaks and lunch periods pursuant to Section 512 of the Labor Code and the orders of the Industrial Welfare Commission without closing the pharmacy. During these temporary absences, a pharmacy technician may, at the discretion of the pharmacist, remain in the pharmacy but may only perform nondiscretionary tasks. The pharmacist shall be responsible for a pharmacy technician and shall review any task performed by a pharmacy technician during the pharmacist's temporary absence. Nothing in this subdivision shall be construed to authorize a pharmacist to supervise pharmacy technicians in greater ratios than those described in subdivision (f).

(h) The pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician supervised by that pharmacist.

(Added by Stats.1996, c. 890 (A.B.2802), § 5. Amended by Stats.1997, c. 549 (S.B.1349), § 67; Stats.1999, c. 900 (S.B.188), § 3, eff. Oct. 10, 1999; Stats.2001, c. 352 (A.B.536), § 1; Stats.2001, c. 728 (S.B.724), § 29.2; Stats.2004, c. 695 (S.B.1913), § 35; Stats.2005, c. 621 (S.B.1111), § 53.)

BUSINESS AND PROFESSIONS CODE — PSYCHIATRIC TECHNICIANS

Chapter 10 PSYCHIATRIC TECHNICIANS

Article 1 GENERALLY

§ 4500. Citation of chapter

This chapter is known and may be cited as the "Psychiatric Technicians Law."

(Added by Stats.1959, c. 1851, p. 4402, § 1.)

§ 4501. Board defined

(a) "Board," as used in this chapter, means the Board of Vocational Nursing and Psychiatric Technicians.

(b) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

(Added by Stats.1959, c. 1851, p. 4402, § 1. Amended by Stats.1968, c. 1323, p. 2501, § 1.4; Stats.1994, c. 908 (S.B.2036), § 31; Stats.1997, c. 759 (S.B.827), § 31; Stats.2003, c. 640 (S.B.358), § 16.)

INOPERATIVE DATE AND REPEAL

For inoperative date and repeal of this section, see its terms.

§ 4501.1. Priority to protect the public

Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

(Added by Stats.2002, c. 107 (A.B.269), § 18.)

§ 4502. Psychiatric technician defined

As used in this chapter, "psychiatric technician" means any person who, for compensation or personal profit, implements procedures and techniques which involve understanding of cause and effect and which are used in the care, treatment, and rehabilitation of mentally ill, emotionally disturbed, or mentally retarded persons and who has one or more of the following:

(a) Direct responsibility for administering or implementing specific therapeutic procedures, techniques, treatments, or medications with the aim of enabling recipients or patients to make optimal use of their therapeutic regime, their social and personal resources, and their residential care.

(b) Direct responsibility for the application of interpersonal and technical skills in the observation and recognition of symptoms and reactions of recipients or patients, for the accurate recording of such symptoms and reactions, and for the carrying out of treatments and medications as prescribed by a licensed physician and surgeon or a psychiatrist.

The psychiatric technician in the performance of such procedures and techniques is responsible to the director of the service in which his duties are performed. The director may be a licensed physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse, or other professional personnel.

Nothing herein shall authorize a licensed psychiatric technician to practice medicine or surgery or to undertake the prevention, treatment or cure of disease, pain, injury, deformity, or mental or physical condition in violation of the law.

(Added by Stats.1959, c. 1851, p. 4402, § 1. Amended by Stats.1968, c. 1323, p. 2501, § 2; Stats.1970, c. 1058, p. 1889, § 2.)

§ 4502.1. Psychiatric technicians; administration of medications by hypodermic injection

A psychiatric technician, working in a mental health facility or developmental disability facility, when prescribed by a physician and surgeon, may administer medications by hypodermic injection.

(Added by Stats.1997, c. 720 (A.B.515), § 1.)

§ 4502.2. Psychiatric technicians; withdrawal of patient's blood; certification

A psychiatric technician, when prescribed by a physician and surgeon, may withdraw blood from a patient with a mental illness or developmental disability if the psychiatric technician has received certification from the board that the psychiatric technician has completed a prescribed course of instruction approved by the board or has demonstrated competence to the satisfaction of the board.
(Added by Stats.1997, c. 720 (A.B.515), § 2.)

§ 4502.3. Psychiatric technicians; performance of medical procedures; demonstration of competence

(a) A psychiatric technician, when prescribed by a physician and surgeon, may perform the following activities on a patient with a mental illness or developmental disability:

(1) Tuberculin, coccidioidin, and histoplasmin skin tests, providing the administration is within the course of a tuberculosis control program.

(2) Immunization techniques, providing the administration is upon the standing orders of a supervising physician and surgeon or pursuant to written guidelines adopted by a hospital or medical group with whom the supervising physician and surgeon is associated.

(b) In performing activities pursuant to subdivision (a), the psychiatric technician shall satisfactorily demonstrate competence in all of the following:

(1) Administering the testing or immunization agents, including knowledge of all indications and contraindications for the administration of the agents.

(2) Recognizing any emergency reactions to the agent that constitute a danger to the health or life of the patient.

(3) Treating those emergency reactions by using procedures, medication, and equipment within the scope of practice of the psychiatric technician.
(Added by Stats.1997, c. 720 (A.B.515), § 3.)

§ 4503. Administration by board

(a) The board shall administer and enforce this chapter.

(b) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.
(Added by Stats.1959, c. 1851, p. 4403, § 1. Amended by Stats.1994, c. 908 (S.B.2036), § 32; Stats.1997, c. 759 (S.B.827), § 32; Stats.2003, c. 640 (S.B.358), § 17.)

INOPERATIVE DATE AND REPEAL

For inoperative date and repeal of this section, see its terms.

§ 4504. Rules and regulations

The board may adopt rules and regulations to carry out the provisions of this chapter.
(Added by Stats.1959, c. 1851, p. 4403, § 1.)

§ 4505. Employment of personnel

Except as provided by Section 159.5, the board may employ whatever personnel is necessary for the administration of this chapter.
(Added by Stats.1959, c. 1851, p. 4403, § 1. Amended by Stats.1968, c. 1323, p. 2502, § 3; Stats.1971, c. 716, p. 1403, § 60. Amended by Stats.1974, c. 529, p. 1220, § 1; Stats.1983, c. 376, § 1.)

§ 4507. Nonapplicability of chapter

This chapter shall not apply to the following:

(a) Physicians and surgeons licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2.

(b) Psychologists licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2.

(c) Registered nurses licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2.

(d) Vocational nurses licensed pursuant to Chapter 6.5 (commencing with Section 2840) of Division 2.

(e) Social workers or clinical social workers licensed pursuant to Chapter 17 (commencing with Section 9000) of Division 3.

(f) Marriage and family therapists licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2.

(g) Teachers credentialed pursuant to Chapter 1.5 (commencing with Section 13101)[1] of Division 10 of the Education Code.

(h) Occupational therapists as specified in Chapter 5.6 (commencing with Section 2570) of Division 2.

(i) Art therapists, dance therapists, music therapists, and recreation therapists, as defined in Division 5 (commencing with Section 70001) of Title 22 of the California Administrative Code, who are personnel of health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(j) Any other categories of persons the board determines are entitled to exemption from this chapter because they have complied with other licensing provisions of this code or because they are deemed by statute or by regulations contained in the California Administrative Code to be adequately trained in their respective occupations. The exemptions shall apply only to a given specialized area of training within the specific discipline for which the exemption is granted.
(Added by Stats.1968, c. 1323, p. 2503, § 5. Amended by Stats.1970, c. 1058, p. 1890, § 3; Stats.1976, c. 742, p. 1766, § 1; Stats.1978, c. 1304, p. 4264, § 1; Stats.1979, c. 643, p. 1994, § 1; Stats.1980, c. 1313, p. 4519, § 10.1; Stats.1983, c. 928, § 3; Stats.2002, c. 1013 (S.B.2026), § 12.)
[1]Repealed; see Education Code § 44200 et seq.

§ 4508. Services by tenets of church or denomination

This chapter does not prohibit provisions of the services regulated herein with or without compensation or personal profit, when done by the tenets of any well–recognized church or denomination, so long as they do not otherwise engage in the practice set forth in the chapter.
(Added by Stats.1968, c. 1323, p. 2503, § 6.)

§ 4509.5. Persons performing services of psychiatric technician for purposes of training

Nothing in this chapter shall be construed to prevent persons from performing services described in Section 4502 for purposes of training to qualify for licensure under a program approved by the board or for training in another allied professional field.
(Added by Stats.1969, c. 1073, p. 2060, § 4.)

Article 2 LICENSURE

§ 4510. Issuance of license

The board shall issue a psychiatric technician's license to each applicant who qualifies therefor, and, if required to take it, successfully passes the examination given pursuant to this chapter. The board shall also issue a psychiatric technician's license to each holder of a psychiatric technician license who qualifies for renewal pursuant to this chapter and who applies for renewal.

After the applicant passes the examination and upon receipt by the board of the initial license fee required by subdivision (e) of Section 4548, the board may issue a receipt or temporary certificate that shall serve as a valid permit for the licensee to practice under this chapter.
(Added by Stats.1959, c. 1851, p. 4403, § 1. Amended by Stats.1968, c. 1323, p. 2503, § 8; Stats.1983, c. 376, § 3; Stats.1994, c. 26 (A.B.1807), § 146, eff. March 30, 1994.)

§ 4510.1. Application; interim permits

An applicant for license by examination shall submit a written application in the form prescribed by the board. After completion of a board accredited or approved psychiatric technician program and approval of the application, the board may issue an interim permit authorizing the applicant to practice all skills included in the permittee's basic course of study, pending the results of the first licensing examination.

A permittee shall function under the supervision of a licensed psychiatric technician or a registered nurse, who shall be present and available on the premises during the time the permittee is rendering professional services. The permittee may perform any function taught in the permittee's basic psychiatric technician program.

If the applicant passes the examination, the interim permit shall remain in effect until an initial license is issued by the board. If the applicant fails the examination, the interim permit shall terminate upon notice by certified mail, return receipt requested, or if the applicant fails to receive the notice, upon the date specified in the interim permit. An interim permittee shall not use any title or designation other than psychiatric technician interim permittee or "P.T.I.P."

(Added by Stats.1987, c. 464, § 3, eff. Sept. 9, 1987.)

§ 4511. Qualifications

An applicant for a psychiatric technician's license shall have the following qualifications:

(a) Be at least 18 years of age.

(b) Have successfully completed an approved general education course of study through the 12th grade or the equivalent thereof as determined by the board.

(c) Have successfully completed (1) a prescribed course of study and training in a school accredited by the board, which course of study and training shall combine the nursing knowledge and skills necessary for the care of any ill person and in addition those special skills necessary for the care of the mentally disabled and the developmentally disabled, or (2) a course of study and training which, together with previously acquired training or experience, is determined by a school accredited by the board to be equivalent in academic credits to its regular program for psychiatric technician training, or (3) have completed a course of study and training which in the opinion of the board is equivalent to the minimum requirements of an accredited program for psychiatric technicians in the state. Clinical inpatient experience shall be an integral part of any such prescribed or equivalent course of study and training.

(d) Have committed no act which, if committed by a licensed psychiatric technician, would be ground for disciplinary action.

(Added by Stats.1959, c. 1851, p. 4403, § 1. Amended by Stats.1968, c. 1323, p. 2503, § 9; Stats.1972, c. 1285, p. 2558, § 3. Amended by Stats.1977, c. 72, p. 475, § 1, eff. May 24, 1977; Stats.1977, c. 587, p. 1949, § 2, eff. Sept. 5, 1977; Stats.1978, c. 1161, p. 3669, § 256; Stats.1978, c. 849, p. 2691, § 2; Stats.1983, c. 376, § 4.)

§ 4511.2. Schools; evaluation of and credit for prior experience and training; additional courses

Schools accredited by the board for the training of psychiatric technicians shall establish assessment procedures for the purpose of evaluating the training and experience possessed by persons seeking enrollment in their psychiatric technician training program. The schools shall:

(a) Grant academic credit toward the completion of a psychiatric technician training program for relevant training and experience in health care, and

(b) Make additional courses available to students who have been given credit for previous training or experience. The courses shall be provided so that only those additional courses specified as needed by the assessment center need be taken by the student and so that such courses can be taken in as short a time as feasible.

(Added by Stats.1977, c. 587, p. 1950, § 3, eff. Sept. 5, 1977.)

§ 4512. Payment of fee

An applicant for a psychiatric technician's license shall, upon the filing of his application, pay to the board the application fee prescribed by this chapter.

(Added by Stats.1959, c. 1851, p. 4404, § 1. Amended by Stats.1961, c. 1250, p. 3012, § 1, operative Oct. 1, 1961; Stats.1968, c. 1323, p. 2504, § 10.)

§ 4513. Examinations

Unless otherwise provided in this chapter, every applicant for a psychiatric technician's license shall be examined by the board. The examination shall be held at least once a year and at the times and places determined by the board.

(Added by Stats.1959, c. 1851, p. 4404, § 1. Amended by Stats.1968, c. 1323, p. 2504, § 11.)

§ 4515. Issuance of license without examination to out–of–state license or certificate holders; requirements

Upon written application and receipt of the required application fee the board may issue a license to any applicant who possesses a valid unrevoked license or certificate as a psychiatric technician issued by any other state or a foreign country, and who in the opinion of the board has the qualifications set forth in Section 4511.

(Added by Stats.1959, c. 1851, p. 4404, § 1. Amended by Stats.1968, c. 1323, p. 2504, § 13.)

§ 4516. Use of letters "P.T."

Every person licensed under this chapter may be known as a licensed psychiatric technician and may place the letters P.T. after his name.

(Added by Stats.1959, c. 1851, p. 4404, § 1. Amended by Stats.1968, c. 1323, p. 2504, § 14.)

§ 4517. Continuing education program; authority to provide; course hours

The board may, in its discretion, provide for a continuing education program in connection with the professional functions and courses described in this chapter. The number of course hours that the board may require in a continuing education program shall not exceed the number of course hours prescribed for licensed vocational nurses pursuant to Section 2892.5.

(Added by Stats.1988, c. 1078, § 1.)

§ 4518. Continuing education program; fees

In the event the board adopts a continuing education program, the board may collect a biennial fee as prescribed under Section 4548 from any provider of a course in continuing education who requests approval by the board of the course for purposes of continuing education requirements adopted by the board. The fee, however, shall in no event exceed the cost required for the board to administer the approval of continuing education courses by continuing education providers.

(Added by Stats.1988, c. 1078, § 2. Amended by Stats.1999, c. 655 (S.B.1308), § 54.)

§ 4519. Continuing education courses; release from duty to attend; expenditure of state funds; memorandum of understanding

(a) In the case of a person who is employed by the state as a psychiatric technician, no state funds shall be expended in releasing the person from duty to attend continuing education courses, other than funds for in–service training and related state–provided programs.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that, if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Added by Stats.1988, c. 1078, § 3. Amended by Stats.2000, c. 208 (A.B.2648), § 1.)

Article 3 DISCIPLINARY PROCEEDINGS

§ 4520. Conduct of proceedings

Every licensed psychiatric technician under this chapter may be

disciplined as provided in this article. The disciplinary proceedings shall be conducted by the board in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
(Added by Stats.1959, c. 1851, p. 4404, § 1. Amended by Stats.1968, c. 1323, p. 2504, § 15.)

§ 4521. Grounds for suspension or revocation

The board may suspend or revoke a license issued under this chapter for any of the following reasons:

(a) Unprofessional conduct, which includes, but is not limited to, any of the following:

(1) Incompetence or gross negligence in carrying out usual psychiatric technician functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000) of Division 2, the record of conviction being conclusive evidence thereof.

(3) The use of advertising relating to psychiatric technician services which violates Section 17500.

(4) Obtain or possess in violation of law, or prescribe, or, except as directed by a licensed physician and surgeon, dentist, or podiatrist, administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug as defined in Section 4022.

(5) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(6) Be convicted of a criminal offense involving the falsification of records concerning prescription, possession, or consumption of any of the substances described in paragraphs (4) and (5), in which event the record of the conviction is conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

(7) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in paragraphs (4) and (5), in which event the court order of commitment or confinement is prima facie evidence of the commitment or confinement.

(8) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in paragraph (4).

(b) Procuring a certificate or license by fraud, misrepresentation, or mistake.

(c) Procuring, or aiding, or abetting, or attempting, or agreeing or offering to procure or assist at a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or terms of this chapter.

(e) Giving any false statement or information in connection with an application.

(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required by this chapter.

(h) Impersonating another practitioner, or permitting another person to use his or her certificate or license.

(i) The use of excessive force upon or the mistreatment or abuse of any patient.

(j) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 12 (commencing with Section 2220) of Chapter 5 of Division 2.

(k) Failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.

(*l*) Failure to report the commission of any act prohibited by this section.

(m) The commission of any act punishable as a sexually related crime, if that act is substantially related to the duties and functions of the licensee.

(n) The commission of any act involving dishonesty, when that action is substantially related to the duties and functions of the licensee.

(*o*) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood–borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood–borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Dental Examiners, and the Board of Registered Nursing, to encourage appropriate consistency in the implementation of this section.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood–borne infectious diseases.
(Added by Stats.1959, c. 1851, p. 4404, § 1. Amended by Stats.1968, c. 1323, p. 2504, § 16; Stats.1978, c. 1161, p. 3670, § 257; Stats.1984, c. 1635, § 18; Stats.1985, c. 106, § 5; Stats.1992, c. 1289 (A.B.2743), § 36; Stats.1994, c. 26 (A.B.1807), § 147, eff. March 30, 1994; Stats.2003, c. 586 (A.B.1777), § 21; Stats.2003, c. 640 (S.B.358), § 18.5.)

§ 4521.1. License issued on probation

The board may issue an initial license on probation, with specific terms and conditions, to any applicant who has violated any term of this chapter, but who has met all other requirements for licensure and who has successfully completed the examination for licensure within four years of the date of issuance of the initial license.
(Added by Stats.1992, c. 1289 (A.B.2743), § 37.)

§ 4521.2. Report of § 4521 violation by others; obligation; failure to report; administrative fine

(a) If a psychiatric technician has knowledge that another person has committed any act prohibited by Section 4521, the psychiatric technician shall report this information to the board in writing and shall cooperate with the board in furnishing information or assistance as may be required.

(b) Any employer of a psychiatric technician shall report to the board the suspension or termination for cause of any psychiatric technician in their employ. In the case of psychiatric technicians employed by the state, the report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194. The reporting required herein shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 of the Business and Professions Code, and shall not be subject to discovery in civil cases.

(c) For purposes of this section, “suspension or termination for

cause" is defined as suspension or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to such an extent that it impairs the licensee's ability to safely practice as a psychiatric technician.

(2) Unlawful sale of controlled substances or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Falsification of medical records.

(5) Gross negligence or incompetence.

(6) Theft from patients or clients, other employees, or the employer.

(d) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars ($10,000) per violation.

(e) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.

(f) The board shall implement this section contingent upon necessary funding being provided in the annual Budget Act.

(Added by Stats.2003, c. 640 (S.B.358), § 19.)

IMPLEMENTATION

For implementation of this section contingent upon funding in the annual Budget Act, see its terms.

§ 4521.6. Denial of application; suspension or revocation of license or permit; grounds

The board may deny any application or may suspend or revoke any license or permit issued under this chapter, for any of the following:

(a) The denial of licensure, suspension, restriction of license, or voluntary surrender following the initiation of disciplinary action by another state or other government agency, of a license, registration, permit, or certificate to practice as a health care professional shall constitute grounds for denial of a permit or license or for disciplinary action against a licensee. A certified copy of the finding from another state which establishes an act which if committed in California would be grounds for discipline shall be conclusive evidence of that action.

(b) The denial of licensure, suspension, restriction of license, or voluntary surrender following the initiation of disciplinary action by another California health care professional licensing board shall constitute grounds for denial of a permit or license or for disciplinary action against a licensee. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(Added by Stats.1992, c. 1289 (A.B.2743), § 38.)

§ 4523. Conviction defined; authority to suspend, revoke or refuse certificate

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a psychiatric technician is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked or may decline to issue a license, when the time for appeal has lapsed, or the judgment or conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(Added by Stats.1959, c. 1851, p. 4406, § 1. Amended by Stats.1968, c. 1323, p. 2506, § 17; Stats.1978, c. 1161, p. 3671, § 258.)

§ 4524. Petition for reinstatement or modification of penalty

(a) A person whose license has been revoked, suspended, surrendered, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the disciplinary order or if any portion of the order is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Except as otherwise provided in this section, at least three years for the reinstatement of a license that was revoked or surrendered, except that the board may, in its sole discretion, specify in its order a lesser period of time, which shall be no less than one year to petition for reinstatement.

(2) At least two years for the early termination of a probation period of three years or more.

(3) At least one year for the early termination of a probation period of less than three years.

(4) At least one year for the modification of a condition of probation, or for the reinstatement of a license revoked for mental or physical illness.

(b) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The board itself or the administrative law judge, if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision.

(d) The board may grant or deny the petition or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(e) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court–imposed probation or parole or subject to an order of registration pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(f) Except in those cases where the petitioner has been disciplined for a violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter the provisions of Sections 822 and 823.

(Added by Stats.2001, c. 728 (S.B.724), § 35.)

Article 4 SCHOOLS FOR PREPARATION OF PSYCHIATRIC TECHNICIANS

§ 4530. List of accredited schools

The board shall prepare and maintain a list of accredited schools which offer an accredited program for psychiatric technicians.

(Added by Stats.1959, c. 1851, p. 4406, § 1.)

§ 4531. Course of instruction; hours or semester units; subjects; clinical inpatient experience

The course of instruction of an accredited school shall consist of not less than the number of hours or semester units of instruction required for the other program administered by the board. The subjects of instruction shall include the principles of the care of the mentally disabled and the developmentally disabled. Clinical inpatient experience shall be an integral part of that prescribed or equivalent course of study and training. The experience shall be obtained in a state hospital, except where the board finds that the requirement is not feasible due either to the distance of a state hospital from the school or the unavailability, as determined by the Department of Developmental Services or the Department of Mental Health, of state hospital clinical training placements.

(Added by Stats.1959, c. 1851, p. 4406, § 1. Amended by Stats.1977, c. 72, p. 475, § 2, eff. May 24, 1977; Stats.1983, c. 376, § 5; Stats.1985, c. 36, § 2.)

§ 4532. Inspection; reports; notice of defects

The board shall provide for the periodic inspection of all psychiatric technician schools in this State. Written reports of the inspection shall be made to the board, which shall then approve as accredited the schools which meet the standards prescribed by it.

If the board determines from a report that any accredited school is not maintaining its prescribed standards, it shall immediately give the school a notice in writing specifying the defect. If the defect is not corrected the board shall, after written notice, remove the school from the accredited list.

(Added by Stats.1959, c. 1851, p. 4407, § 1.)

Article 5 PENAL PROVISIONS

§ 4540. Necessity of license

After January 1, 1970, no person shall perform services described in Section 4502 without a license issued under this chapter.

(Added by Stats.1968, c. 1323, p. 2506, § 18.)

§ 4541. Unlawful use of title or letters

It is unlawful for any person to use any title or letters which imply that he is a certified or licensed psychiatric technician unless at the time of so doing he holds a valid, unexpired, and unrevoked certificate or license issued under this chapter.

(Formerly § 4540, added by Stats.1959, c. 1851, p. 4407, § 1. Amended by Stats.1961, c. 1250, p. 3012, § 2, operative Oct. 1, 1961. Renumbered § 4541 and amended by Stats.1968, c. 1323, p. 2506, § 19.)

§ 4542. Misrepresentation or impersonation

It is unlawful for any person willfully to make any false representation, impersonate any other person, or permit or aid any other person in any manner to impersonate him in connection with any examination or application for a license.

(Formerly § 4541, added by Stats.1959, c. 1851, p. 4407, § 1. Renumbered § 4542 and amended by Stats.1968, c. 1323, p. 2506, § 20.)

§ 4543. Violation; misdemeanor; punishment

Any person who violates any of the provisions of this chapter is guilty of a misdemeanor and upon a conviction thereof shall be punished by imprisonment in the county jail for not less than 10 days nor more than one year, or by a fine of not less than twenty dollars ($20) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment.

(Formerly § 4542, added by Stats.1959, c. 1851, p. 4407, § 1. Renumbered § 4543 and amended by Stats.1968, c. 1323, p. 2507, § 21. Amended by Stats.1983, c. 1092, § 18, eff. Sept. 27, 1983, operative Jan. 1, 1984.)

Article 6 REVENUE

§ 4544. Licenses; expiration; renewal

A license expires each year on that date prescribed by the board, if not renewed. To renew an unexpired license the holder thereof shall, on or before each of the dates on which it would otherwise expire, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this chapter.

(Added by Stats.1959, c. 1851, p. 4407, § 1. Amended by Stats.1961, c. 1250, p. 3012, § 4, operative Oct. 1, 1961; Stats.1965, c. 1373, p. 3277, § 3, eff. July 23, 1965; Stats.1968, c. 1323, p. 2507, § 22. Amended by Stats.1978, c. 1161, p. 3672, § 260; Stats.1983, c. 376, § 6.)

§ 4544.5. Biennial renewal period

The board may establish a biennial renewal period.

(Added by Stats.1978, c. 996, p. 3069, § 1.)

§ 4545. Renewal after expiration of license; forfeited certificates; expiration

Except as provided in Section 4545.2, a license that has expired may be renewed at any time within four years after its expiration on filing an application for renewal on a form prescribed by the board, payment of all accrued and unpaid renewal fees, and payment of all fees required by this chapter. If the license is renewed more than 30 days after its expiration, the holder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 4544 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

A certificate which was forfeited for failure to renew under the law in effect before October 1, 1961, shall, for the purposes of this article, be considered to have expired on the date that it became forfeited.

(Added by Stats.1959, c. 1851, p. 4407, § 1. Amended by Stats.1961, c. 1250, p. 3013, § 5, operative Oct. 1, 1961; Stats.1965, c. 1373, p. 3278, § 4, eff. July 23, 1965; Stats.1968, c. 1323, p. 2507, § 23; Stats.1978, c. 1161, p. 3672, § 261; Stats.1983, c. 376, § 7; Stats.1994, c. 26 (A.B.1807), § 148, eff. March 30, 1994; Stats.2001, c. 435 (S.B.349), § 12.)

§ 4545.1. Expiration of suspended license; renewal

A suspended certificate is subject to expiration in the same manner as provided in this article for an unsuspended certificate, is subject to renewal in the same manner as provided in this article for an unsuspended certificate, and is subject to the provisions of this section relating to a suspended license.

A suspended license is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the holder of the license, while it remains suspended and until it is reinstated, to engage in the activity to which the license relates, or in any other activity or conduct in violation of the order or judgment by which it was suspended.

(Added by Stats.1961, c. 1250, p. 3013, § 6, operative Oct. 1, 1961. Amended by Stats.1968, c. 1323, p. 2507, § 24.)

§ 4545.2. Expiration of revoked certificate or license; renewal; reinstatement

A revoked certificate is subject to expiration in the same manner as provided in this article for an unrevoked certificate, but it may not be renewed. An application for reinstatement of a revoked certificate shall be deemed an application for reinstatement of a revoked license and shall be processed as such. The board shall issue a psychiatric technician's license to each holder of a psychiatric technician certificate who qualifies for reinstatement pursuant to this chapter and who applies for reinstatement.

A revoked license is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the holder of the license shall, as a condition precedent to its reinstatement, pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

(Added by Stats.1961, c. 1250, p. 3013, § 7, operative Oct. 1, 1961. Amended by Stats.1968, c. 1323, p. 2508, § 25.)

§ 4545.3. Failure to renew certificate or license within four years; issuance of new license; conditions

A certificate and the holder thereof are subject to this section in the same manner as are a license and the holder thereof.

A license which is not renewed within four years after its expiration may not be renewed, restored, reinstated, or reissued thereafter, but the holder may apply for and obtain a new license if:

(a) No fact, circumstance, or condition exists which would justify denial of the license under Section 480.

(b) He pays all of the fees which would be required of him if he were then applying for a license for the first time, and

(c) He takes and passes the examination, if any, which would be required of him if he were then applying for the license for the first time, or otherwise establishes to the satisfaction of the board that, with

due regard for the public interest, he is qualified to perform the services described in Section 4502.

The board may, by appropriate regulation, provide for the waiver or refund of all or any part of the application fee in those cases in which a license is issued without an examination under this section.

(Added by Stats.1961, c. 1250, p. 3013, § 8, operative Oct. 1, 1961. Amended by Stats.1968, c. 1323, p. 2508, § 26. Amended by Stats.1978, c. 1161, p. 3672, § 262; Stats.1983, c. 376, § 8.)

§ 4546. Monthly revenue report; deposit of funds; reserve balances

The board shall report each month to the Controller the amount and source of all revenue received by it pursuant to this chapter and at the same time pay the entire amount thereof into the State Treasury for credit to the Vocational Nursing and Psychiatric Technicians Fund. The board shall not maintain a reserve balance greater than three months of the appropriated operating expenditures of the board in any fiscal year.

(Added by Stats.1959, c. 1851, p. 4407, § 1. Amended by Stats.1968, c. 1323, p. 2509, § 27; Stats.1993, c. 1264 (S.B.574), § 6.1; Stats.1994, c. 26 (A.B.1807), § 149, eff. March 30, 1994; Stats.1997, c. 759 (S.B.827), § 32.5.)

§ 4547. Payment of expenses

All expenses incurred in the operation of this chapter shall be paid out of the Vocational Nursing and Psychiatric Technicians Fund from the revenue received by the board under this chapter and deposited in the Vocational Nursing and Psychiatric Technicians Fund. No part of the expenses shall be charged against any funds which are derived from any functions of the board provided for in other chapters of this code.

(Added by Stats.1959, c. 1851, p. 4408, § 1. Amended by Stats.1968, c. 1323, p. 2509, § 28; Stats.1997, c. 759 (S.B.827), § 32.6.)

§ 4548. Amount of fees

The amount of the fees prescribed by this chapter in connection with the issuance of licenses under its provisions shall be according to the following schedule:

(a) The fee to be paid upon the filing of an application shall be in an amount not less than one hundred dollars ($100), and may be fixed by the board at an amount no more than one hundred fifty dollars ($150).

(b) The fee to be paid for taking each examination shall be the actual cost to purchase an examination from a vendor approved by the board.

(c) The fee to be paid for any examination after the first shall be in an amount of not less than one hundred dollars ($100), and may be fixed by the board at an amount no more than one hundred fifty dollars ($150).

(d) The biennial renewal fee to be paid upon the filing of an application for renewal shall be in an amount not less than two hundred forty dollars ($240), and may be fixed by the board at an amount no more than three hundred dollars ($300).

(e) Notwithstanding Section 163.5, the delinquency fee for failure to pay the biennial renewal fee within the prescribed time shall be in an amount not less than one hundred twenty dollars ($120) and may be fixed by the board at not more than 50 percent of the regular renewal fee and in no case more than one hundred fifty dollars ($150).

(f) The initial license fee is an amount equal to the biennial renewal fee in effect on the date the application for the license is filed.

(g) The fee to be paid for an interim permit shall be in an amount no less than twenty dollars ($20) and may be fixed by the board at an amount no more than fifty dollars ($50).

(h) The fee to be paid for a duplicate license shall be in an amount not less than twenty dollars ($20) and may be fixed by the board at an amount no more than fifty dollars ($50).

(i) The fee to be paid for processing endorsement papers to other states shall be in an amount not less than twenty dollars ($20) and may be fixed by the board at an amount no more than fifty dollars ($50).

(j) The fee to be paid for postlicensure certification in blood withdrawal shall be in an amount not less than twenty dollars ($20) and may be fixed by the board at an amount no more than fifty dollars ($50).

(k) The biennial fee to be paid upon the filing of an application for renewal for a provider of an approved continuing education course or a course to meet the certification requirements for blood withdrawal shall be in an amount not less than one hundred fifty dollars ($150), and may be fixed by the board at an amount no more than two hundred dollars ($200).

(Added by Stats.1959, c. 1851, p. 4408, § 1. Amended by Stats.1961, c. 1250, p. 3014, § 9, operative Oct. 1, 1961; Stats.1965, c. 1373, p. 3278, § 5, eff. July 23, 1965; Stats.1978, c. 1161, p. 3673, § 263; Stats.1978, c. 996, p. 3069, § 2; Stats.1986, c. 1233, § 1; Stats.1987, c. 464, § 4, eff. Sept. 9, 1987.); Stats.1993, c. 1264 (S.B.574), § 6.2; Stats.1997, c. 720 (A.B.515), § 4; Stats.1999, c. 655 (S.B.1308), § 55.)

BUSINESS AND PROFESSIONS CODE — MARRIAGE AND FAMILY THERAPISTS

Chapter 13 MARRIAGE AND FAMILY THERAPISTS

Article 1 REGULATION

§ 4980. Necessity of license

(a) Many California families and many individual Californians are experiencing difficulty and distress, and are in need of wise, competent, caring, compassionate, and effective counseling in order to enable them to improve and maintain healthy family relationships.

Healthy individuals and healthy families and healthy relationships are inherently beneficial and crucial to a healthy society, and are our most precious and valuable natural resource. Marriage and family therapists provide a crucial support for the well–being of the people and the State of California.

(b) No person may engage in the practice of marriage and family therapy as defined by Section 4980.02, unless he or she holds a valid license as a marriage and family therapist, or unless he or she is specifically exempted from that requirement, nor may any person advertise himself or herself as performing the services of a marriage, family, child, domestic, or marital consultant, or in any way use these or any similar titles, including the letters “M.F.T.” or “M.F.C.C.,” or other name, word initial, or symbol in connection with or following his or her name to imply that he or she performs these services without a license as provided by this chapter. Persons licensed under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2, or under Chapter 6.6 (commencing with Section 2900) may engage in such practice or advertise that they practice marriage and family therapy but may not advertise that they hold the marriage and family therapist’s license.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.2000, c. 836 (S.B.1554), § 28; Stats.2002, c. 1013 (S.B.2026), § 13.)

§ 4980.01. Construction with other laws; exemption of certain professionals and employees; status as health care practitioner

(a) Nothing in this chapter shall be construed to constrict, limit, or withdraw the Medical Practice Act, the Social Work Licensing Law, the Nursing Practice Act, or the Psychology Licensing Act.

(b) This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination when performing counseling services as part of his or her pastoral or professional duties, or to any person who is admitted to practice law in the state, or who is licensed to practice medicine, when providing counseling services as part of his or her professional practice.

(c) This chapter shall not apply to an employee of a governmental entity or of a school, college, or university, or of an institution both nonprofit and charitable if his or her practice is performed solely under the supervision of the entity, school, or organization by which he or she is employed, and if he or she performs those functions as part of the position for which he or she is employed.

(d) A marriage and family therapist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care practitioner subject to the provisions of Section 2290.5 pursuant to subdivision (b) of that section.

(e) Notwithstanding subdivisions (b) and (c) all persons registered as interns or licensed under this chapter shall not be exempt from this chapter or the jurisdiction of the board.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1993, c. 1054 (A.B.1885), § 1; Stats.2003, c. 20 (A.B.116), § 4.)

§ 4980.02. Practice of marriage and family therapy; application of principles and methods

For the purposes of this chapter, the practice of marriage and family therapy shall mean that service performed with individuals, couples, or groups wherein interpersonal relationships are examined for the purpose of achieving more adequate, satisfying, and productive marriage and family adjustments. This practice includes relationship and premarriage counseling.

The application of marriage and family therapy principles and methods includes, but is not limited to, the use of applied pyschotherapeutic techniques, to enable individuals to mature and grow within marriage and the family, the provision of explanations and interpretations of the psychosexual and psychosocial aspects of relationships, and the use, application, and integration of the coursework and training required by Sections 4980.37, 4980.40, and 4980.41.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1990, c. 1086 (S.B.2214), § 1; Stats.2002, c. 1013 (S.B.2026), § 14; Stats.2004, c. 204 (A.B.2552), § 2.)

§ 4980.03. Definitions

(a) "Board," as used in this chapter, means the Board of Behavioral Sciences.

(b) "Intern," as used in this chapter, means an unlicensed person who has earned his or her master's or doctor's degree qualifying him or her for licensure and is registered with the board.

(c) "Trainee," as used in this chapter, means an unlicensed person who is currently enrolled in a master's or doctor's degree program, as specified in Section 4980.40, that is designed to qualify him or her for licensure under this chapter, and who has completed no less than 12 semester units or 18 quarter units of coursework in any qualifying degree program.

(d) "Applicant," as used in this chapter, means an unlicensed person who has completed a master's or doctoral degree program, as specified in Section 4980.40, and whose application for registration as an intern is pending, or an unlicensed person who has completed the requirements for licensure as specified in this chapter, is no longer registered with the board as an intern, and is currently in the examination process.

(e) "Advertise," as used in this chapter, includes, but is not limited to, the issuance of any card, sign, or device to any person, or the causing, permitting, or allowing of any sign or marking on, or in, any building or structure, or in any newspaper or magazine or in any directory, or any printed matter whatsoever, with or without any limiting qualification. It also includes business solicitations communicated by radio or television broadcasting. Signs within church buildings or notices in church bulletins mailed to a congregation shall not be construed as advertising within the meaning of this chapter.

(f) "Experience," as used in this chapter, means experience in interpersonal relationships, psychotherapy, marriage and family therapy, and professional enrichment activities that satisfies the requirement for licensure as a marriage and family therapist pursuant to Section 4980.40.

(g) "Supervisor," as used in this chapter, means an individual who meets all of the following requirements:

(1) Has been licensed for at least two years as a marriage and family therapist, licensed clinical social worker, licensed psychologist, or licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology.

(2) Has not provided therapeutic services to the trainee or intern.

(3) Has been licensed or certified for at least two years prior to acting as a supervisor.

(4) Has a current and valid license that is not under suspension or probation.

(5) Complies with supervision requirements established by board regulations.

(h) "Professional enrichment activities," as used in this chapter, include both of the following:

(1) Workshops, seminars, training sessions, or conferences directly related to marriage and family therapy attended by the applicant that are approved by the applicant's supervisor.

(2) Participation by the applicant in group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1993, c. 1054 (A.B.1885), § 2; Stats.1996, c. 829 (A.B.3473), § 85; Stats.2000, c. 836 (S.B.1554), § 29; Stats.2005, c. 658 (S.B.229), § 16.)

§ 4980.07. Administration of chapter

The board shall administer the provisions of this chapter.

(Added by Stats.1986, c. 1365, § 4.)

§ 4980.08. Licensed marriage and family therapist; marriage and family therapist; name change; construction of section

(a) The title "licensed marriage, family and child counselor" or "marriage, family and child counselor" is hereby renamed "licensed marriage and family therapist" or "marriage and family therapist," respectively. Any reference in any statute or regulation to a "licensed marriage, family and child counselor" or "marriage, family and child counselor" shall be deemed a reference to a "licensed marriage and family therapist" or "marriage and family therapist."

(b) Nothing in this section shall be construed to expand or constrict the scope of practice of a person licensed pursuant to this chapter.

(c) This section shall become operative July 1, 1999.

(Added by Stats.1998, c. 108 (A.B.1449), § 1, operative July 1, 1999.)

§ 4980.10. Engaging in practice

A person engages in the practice of marriage and family therapy who performs or offers to perform or holds himself or herself out as able to perform this service for remuneration in any form, including donations.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.2002, c. 1013 (S.B.2026), § 15.)

§ 4980.30. Application for license; payment of fee

Except as otherwise provided herein, a person desiring to practice

and to advertise the performance of marriage and family therapy services shall apply to the board for a license and shall pay the license fee required by this chapter.
(Added by Stats.1986, c. 1365, § 4. Amended by Stats.2002, c. 1013 (S.B.2026), § 16.)

§ 4980.31. Display of license in primary place of practice

A licensee shall display his or her license in a conspicuous place in the licensee's primary place of practice.
(Added by Stats.1998, c. 879 (S.B.2238), § 4.)

§ 4980.34. Legislative intent

It is the intent of the Legislature that the board employ its resources for each and all of the following functions:

(a) The licensing of marriage and family therapists, clinical social workers, and educational psychologists.

(b) The development and administration of licensing examinations and examination procedures, as specified, consistent with prevailing standards for the validation and use of licensing and certification tests. Examinations shall measure knowledge and abilities demonstrably important to the safe, effective practice of the profession.

(c) Enforcement of laws designed to protect the public from incompetent, unethical, or unprofessional practitioners.

(d) Consumer education.
(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1998, c. 589 (S.B.1983), § 10; Stats.2002, c. 1013 (S.B.2026), § 17; Stats.2003, c. 874 (S.B.363), § 6.)

§ 4980.35. Obligation to provide complete and accurate application; duties of board

(a) The Legislature acknowledges that the basic obligation to provide a complete and accurate application for a marriage and family therapist license lies with the applicant. At the same time, the Legislature recognizes that an effort should be made by the board to ensure that persons who enter degree programs and supervisorial training settings that meet the requirements of this chapter are enabled to discern the requirements for licensing and to take the examination when they have completed their educational and experience requirements.

(b) In order that the board, the educational institutions, and the supervisors who monitor the education and experience of applicants for licensure may develop greater cooperation, the board shall do all of the following:

(1) Apply a portion of its limited resources specifically to the task of communicating information about its activities, the requirements and qualifications for licensure, and the practice of marriage and family therapy to the relevant educational institutions, supervisors, professional associations, applicants, trainees, interns, and the consuming public.

(2) Develop policies and procedures to assist educational institutions in meeting the curricula requirements of Section 4980.40 and any regulations adopted pursuant to that section, so that those educational institutions may better provide assurance to their students that the curriculum offered to fulfill the educational requirements for licensure will meet those requirements at the time of the student's application for licensure.

(3) Notify applicants in the application procedure when applications are incomplete, inaccurate, or deficient, and inform applicants of any remediation, reconsideration, or appeal procedures that may be applicable.

(4) Undertake, or cause to be undertaken, further comprehensive review, in consultation with educational institutions, professional associations, supervisors, interns, and trainees, of the supervision of interns and trainees, which shall include, but not be limited to, the following, and shall propose regulations regarding the supervision of interns and trainees which may include, but not be limited to, the following:

(A) Supervisor qualifications.

(B) Continuing education requirements of supervisors.

(C) Registration or licensing of supervisors, or both.

(D) Responsibilities of supervisors in general.

(E) The board's authority in cases of noncompliance or negligence by supervisors.

(F) The intern's and trainee's need for guidance in selecting well–balanced and high quality professional training opportunities within his or her community.

(G) The role of the supervisor in advising and encouraging his or her intern or trainee regarding the necessity or value and appropriateness of the intern or trainee engaging in personal psychotherapy, so as to enable the intern or trainee to become a more competent marriage and family therapist.
(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1993, c. 1054 (A.B.1885), § 3; Stats.2002, c. 1013 (S.B.2026), § 18.)

§ 4980.37. Degree program; course of study and professional training

(a) In order to provide an integrated course of study and appropriate professional training, while allowing for innovation and individuality in the education of marriage and family therapists, a degree program which meets the educational qualifications for licensure shall include all of the following:

(1) Provide an integrated course of study that trains students generally in the diagnosis, assessment, prognosis, and treatment of mental disorders.

(2) Prepare students to be familiar with the broad range of matters that may arise within marriage and family relationships.

(3) Train students specifically in the application of marriage and family relationship counseling principles and methods.

(4) Encourage students to develop those personal qualities that are intimately related to the counseling situation such as integrity, sensitivity, flexibility, insight, compassion, and personal presence.

(5) Teach students a variety of effective psychotherapeutic techniques and modalities that may be utilized to improve, restore, or maintain healthy individual, couple, and family relationships.

(6) Permit an emphasis or specialization that may address any one or more of the unique and complex array of human problems, symptoms, and needs of Californians served by marriage and family therapists.

(7) Prepare students to be familiar with crosscultural mores and values, including a familiarity with the wide range of racial and ethnic backgrounds common among California's population, including, but not limited to, Blacks, Hispanics, Asians, and Native Americans.

(b) Educational institutions are encouraged to design the practicum required by subdivision (b) of Section 4980.40 to include marriage and family therapy experience in low–income and multicultural mental health settings.
(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1993, c. 1054 (A.B.1885), § 4; Stats.2002, c. 1013 (S.B.2026), § 19.)

§ 4980.38. Notification to students of design of degree program; certification of fulfillment of requirements

(a) Each educational institution preparing applicants to qualify for licensure shall notify each of its students by means of its public documents or otherwise in writing that its degree program is designed to meet the requirements of Sections 4980.37 and 4980.40, and shall certify to the board that it has so notified its students.

(b) In addition to all of the other requirements for licensure, each applicant shall submit to the board a certification by the chief academic officer, or his or her designee, of the applicant's educational institution that the applicant has fulfilled the requirements enumerated in Sections 4980.37 and 4980.40, and subdivisions (d) and (e) of Section 4980.41.

(c) An applicant for an intern registration who has completed a program to update his or her degree in accordance with paragraph (1) of subdivision (i) of Section 4980.40 shall furnish to the board

certification by the chief academic officer of a school, college, or university accredited by the Western Association of Schools and Colleges, or from a school, college, or university meeting accreditation standards comparable to those of the Western Association of Schools and Colleges, that the applicant has successfully completed all academic work necessary to comply with the current educational requirements for licensure as a marriage and family therapist.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1987, c. 738, § 1; Stats.1993, c. 1054 (A.B.1885), § 5; Stats.2001, c. 435 (S.B.349), § 13; Stats.2002, c. 1013 (S.B.2026), § 20.)

§ 4980.39. Graduate study coursework in aging and long–term care; program contents; minimum contact hours

(a) Any applicant for licensure as a marriage and family therapist who began graduate study on or after January 1, 2004, shall complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long–term care, which could include, but is not limited to, the biological, social, and psychological aspects of aging.

(b) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(c) In order to satisfy the coursework requirement of this section, the applicant shall submit to the board a certification from the chief academic officer of the educational institution from which the applicant graduated stating that the coursework required by this section is included within the institution's required curriculum for graduation, or within the coursework, that was completed by the applicant.

(d) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

(Added by Stats.2002, c. 541 (S.B.953), § 6.)

§ 4980.395. Continuing education coursework in aging and long–term care; program contents; minimum number of hours

(a) A licensee who began graduate study prior to January 1, 2004, shall complete a three–hour continuing education course in aging and long–term care during his or her first renewal period after the operative date of this section and shall submit to the board evidence, acceptable to the board, of the person's satisfactory completion of the course.

(b) The course shall include, but is not limited to, the biological, social, and psychological aspects of aging.

(c) A person seeking to meet the requirements of subdivision (a) of this section may submit to the board a certificate evidencing completion of equivalent courses in aging and long–term care taken prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(d) The board may not renew an applicant's license until the applicant has met the requirements of this section.

(e) Continuing education courses taken pursuant to this section shall be applied to the 36 hours of approved continuing education required in Section 4980.54.

(f) This section shall become operative on January 1, 2005.

(Added by Stats.2002, c. 541 (S.B.953), § 7. Amended by Stats.2004, c. 695 (S.B.1913), § 44, operative Jan. 1, 2005.)

§ 4980.40. Qualifications

To qualify for a license, an applicant shall have all the following qualifications:

(a) Applicants * * * shall possess a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, or approved by the Bureau for Private Postsecondary and Vocational Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation or approval. * * * In order to qualify for licensure pursuant to this subdivision, a doctor's or master's degree program shall be a single, integrated program primarily designed to train marriage and family therapists and shall contain no less than 48 semester or 72 quarter units of instruction. The instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling, and marital and family systems approaches to treatment.

The coursework shall include all of the following areas:

(1) The salient theories of a variety of psychotherapeutic orientations directly related to marriage and family therapy, and marital and family systems approaches to treatment.

(2) Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.

(3) Developmental issues and life events from infancy to old age and their effect upon individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families, stepparenting, and geropsychology.

(4) A variety of approaches to the treatment of children.

The board shall, by regulation, set forth the subjects of instruction required in this subdivision.

(b)(1) In addition to the 12 semester or 18 quarter units of coursework specified above, the doctor's or master's degree program shall contain not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, couple, family, and child relationships, including dysfunctions, healthy functioning, health promotion, and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage and family therapist.

(2) For applicants who enrolled in a degree program on or after January 1, 1995, the practicum shall include a minimum of 150 hours of face–to–face experience counseling individuals, couples, families, or groups.

* * *

(3) The practicum hours shall be considered as part of the 48 semester or 72 quarter unit requirement.

(c) As an alternative to meeting the qualifications specified in subdivision (a), the board shall accept as equivalent degrees, those master's or doctor's degrees granted by educational institutions whose degree program is approved by the Commission on Accreditation for Marriage and Family Therapy Education.

(d) All applicants shall, in addition, complete the coursework or training specified in Section 4980.41.

(e) All applicants shall be at least 18 years of age.

(f) All applicants shall have at least two years of experience that meet the requirements of * * * Section 4980.43.

(g) The applicant shall pass a board administered written or oral examination or both types of examinations, except that an applicant who passed a written examination and who has not taken and passed an oral examination shall instead be required to take and pass a clinical vignette written examination.

(h) The applicant shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480. The

board shall not issue a registration or license to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(i)(1) An applicant applying for intern registration who, prior to December 31, 1987, met the qualifications for registration, but who failed to apply or qualify for intern registration may be granted an intern registration if the applicant meets all of the following criteria:

(A) The applicant possesses a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, counseling with an emphasis in marriage, family, and child counseling, or social work with an emphasis in clinical social work obtained from a school, college, or university currently conferring that degree that, at the time the degree was conferred, was accredited by the Western Association of Schools and Colleges, and where the degree conferred was, at the time it was conferred, specifically intended to satisfy the educational requirements for licensure by the Board of Behavioral Sciences.

(B) The applicant's degree and the course content of the instruction underlying that degree have been evaluated by the chief academic officer of a school, college, or university accredited by the Western Association of Schools and Colleges to determine the extent to which the applicant's degree program satisfies the current educational requirements for licensure, and the chief academic officer certifies to the board the amount and type of instruction needed to meet the current requirements.

(C) The applicant completes a plan of instruction that has been approved by the board at a school, college, or university accredited by the Western Association of Schools and Colleges that the chief academic officer of the educational institution has, pursuant to subparagraph (B), certified will meet the current educational requirements when considered in conjunction with the original degree.

(2) A person applying under this subdivision shall be considered a trainee, as that term is defined in Section 4980.03, once he or she is enrolled to complete the additional coursework necessary to meet the current educational requirements for licensure.

(j) An applicant for licensure trained in an educational institution outside the United States shall demonstrate to the satisfaction of the board that he or she possesses a qualifying degree that is equivalent to a degree earned from a school, college, or university accredited by the Western Association of Schools and Colleges, or approved by the Bureau of Private Postsecondary and Vocational Education. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and shall provide any other documentation the board deems necessary.

(Added by Stats.1995, c. 758 (A.B.446), § 6.5, operative Jan. 1, 1997. Amended by Stats.1996, c. 829 (A.B.3473), § 86, operative Jan. 1, 1997; Stats.1998, c. 879 (S.B.2238), § 4.5; Stats.2001, c. 728 (S.B.724), § 36; Stats.2002, c. 1013 (S.B.2026), § 21; Stats.2003, c. 874 (S.B.363), § 7; Stats.2004, c. 909 (S.B.136), § 10, eff. Sept. 30, 2004; Stats.2005, c. 658 (S.B.229), § 17.)

§ 4980.41. Eligibility to sit for licensing examinations; coursework or training

All applicants for licensure shall complete the following coursework or training in order to be eligible to sit for the licensing examinations as specified in subdivision (g) of Section 4980.40:

(a) A two semester or three quarter unit course in California law and professional ethics for marriage and family therapists, which shall include, but not be limited to, the following areas of study:

(1) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the profession's scope of practice.

(2) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of marriage and family therapy, including family law.

(3) The current legal patterns and trends in the mental health profession.

(4) The psychotherapist/patient privilege, confidentiality, the patient dangerous to self or others, and the treatment of minors with and without parental consent.

(5) A recognition and exploration of the relationship between a practitioner's sense of self and human values and his or her professional behavior and ethics.

This course may be considered as part of the 48 semester or 72 quarter unit requirements contained in Section 4980.40.

(b) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(c) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.40.

(d) For persons who began graduate study on or after January 1, 1986, a master's or doctor's degree qualifying for licensure shall include specific instruction in alcoholism and other chemical substance dependency as specified by regulation. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester or 72 quarter unit requirement contained in Section 4980.40.

(e) For persons who began graduate study during the period commencing on January 1, 1995, and ending on December 31, 2003, a master's or doctor's degree qualifying for licensure shall include coursework in spousal or partner abuse assessment, detection, and intervention. For persons who began graduate study on or after January 1, 2004, a master's or doctor's degree qualifying for licensure shall include a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. The requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

(f) For persons who began graduate study on or after January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychological testing. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.40.

(g) For persons who began graduate study on or after January 1, 2001, an applicant shall complete a minimum of a two semester or three quarter unit survey course in psychopharmacology. When coursework in a master's or doctor's degree program is acquired to satisfy this requirement, it may be considered as part of the 48 semester or 72 quarter unit requirement of Section 4980.40.

(h) The requirements added by subdivisions (f) and (g) are intended to improve the educational qualifications for licensure in order to better prepare future licentiates for practice, and are not intended in any way to expand or restrict the scope of licensure for marriage and family therapists.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1987, c. 738, § 3; Stats.1993, c. 1234 (A.B.890), § 9; Stats.1999, c. 406 (A.B.253), § 1; Stats.2001, c. 435 (S.B.349), § 14; Stats.2002, c. 481 (S.B.564), § 4; Stats.2003, c. 874 (S.B.363), § 8.)

§ 4980.42. Trainees' services

(a) Trainees performing services in any work setting specified in subdivision (e) of Section 4980.43 may perform those activities and services as a trainee, provided that the activities and services constitute part of the trainee's supervised course of study and that the person is designated by the title "trainee." Trainees may gain hours of experience outside the required practicum. Those hours shall be subject to the requirements of subdivision (b) and to the other requirements of this chapter.

(b) On and after January 1, 1995, all hours of experience gained as a trainee shall be coordinated between the school and the site where the hours are being accrued. The school shall approve each site and shall have a written agreement with each site that details each party's responsibilities, including the methods by which supervision shall be provided. The agreement shall provide for regular progress reports and evaluations of the student's performance at the site. If an applicant has gained hours of experience while enrolled in an institution other than the one that confers the qualifying degree, it shall be the applicant's responsibility to provide to the board satisfactory evidence that those hours of trainee experience were gained in compliance with this section.

(Added by Stats.1993, c. 1054 (A.B.1885), § 8.)

§ 4980.43. Professional experience; supervision; credit; registration; remuneration; place of service; counseling or psychotherapy

(a) Prior to applying for licensure examinations, each applicant shall complete experience that shall comply with the following:

* * * (1) A minimum of * * * 3,000 hours * * * completed during a period of at least 104 weeks.

(2) Not more than 40 hours in any seven consecutive days.

(3) Not less than 1,700 hours of supervised experience * * * completed subsequent to the granting of the qualifying master's or doctor's degree.

(4) Not more than 1,300 hours of experience obtained prior to completing a master's or doctor's degree. This experience shall be composed as follows:

* * * (A) Not more than 750 hours of counseling and direct supervisor contact * * *.

(B) Not more than 250 hours of professional enrichment activities excluding personal psychotherapy.

(C) Not more than 100 hours of personal psychotherapy. The applicant shall be credited for three hours of experience for each hour of personal psychotherapy.

(5) No hours of experience may be gained prior to completing either 12 semester units or 18 quarter units of graduate instruction and becoming a trainee except for personal psychotherapy.

* * * (6) No hours of experience gained more than six years * * * prior to the date the application for licensure was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (b) of Section 4980.40 shall be exempt from this six– year requirement.

(7) Not more than 1000 hours of experience for direct supervisor contact and professional activities.

(8) Not more than 500 hours of experience providing group therapy or group counseling.

(9) Not more than 250 hours of experience administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes, or writing process notes.

(10) Not more than 250 hours of experience providing counseling or crisis counseling on the telephone.

(11) Not less than 500 total hours of experience in diagnosing and treating couples, families, and children.

(b) All applicants, trainees, and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. Supervised experience shall be gained by interns and trainees either as an employee or as a volunteer * * *. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by interns or trainees as an independent contractor.

(c) Supervision shall include at least one hour of direct supervisor contact in each week * * * for which experience * * * is credited in each work setting, as specified:

(1) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting.

* * * (2) Each individual supervised after being granted a qualifying degree shall receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting in which experience is gained.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour of face–to–face contact on an individual basis or two hours of face–to–face contact in a group of not more than eight persons.

* * * (4) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation. The 5–to–1 and 10–to–1 ratios specified in this subdivision shall be applicable to all hours gained on or after January 1, 1995.

* * *

(d)(1)[1]

A trainee may * * * be credited with supervised experience completed in any setting that meets all of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(C) Is not a private practice owned by a licensed marriage and family therapist, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(2) Experience may be gained by the trainee solely as part of the position for which the trainee volunteers or is employed.

(e)(1) An intern may * * * be credited with supervised experience * * * completed in any setting that meets both of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the intern's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(2) An applicant shall not be employed or volunteer in a private practice, as defined in subparagraph (C) of paragraph (1) of subdivision (d), until registered as an intern.

(3) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration to interns.

(4) Except for periods of time during a supervisor's vacation or sick leave, an intern who is employed or volunteering in private practice shall be under the direct supervision of a licensee enumerated in subdivision (f) of Section 4980.40. The supervising licensee shall either be employed by and practice at the same site as the intern's employer, or shall be an owner or shareholder of the private practice. Alternative supervision may be arranged during a supervisor's vacation or sick leave if the supervision meets the requirements of this section.

(5) Experience may be gained by the intern solely as part of the position for which the intern volunteers or is employed.

* * * (f) Except as provided in subdivision (g), all persons shall register with the board as an intern in order to be credited for postdegree hours of supervised experience gained toward licensure * * *.

(g) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting of the qualifying master's or doctor's degree and is thereafter granted the intern registration by the board.

(h) Trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(i) Trainees, interns, and applicants shall only perform services at the place where their employers regularly conduct business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in the employer's business.

(j) Trainees, interns, or applicants who provide volunteered services or other services, and who receive no more than a total, from all work settings, of five hundred dollars ($500) per month as reimbursement for expenses actually incurred by those trainees, interns, or applicants for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicants who receive reimbursement for expenses, and the applicants shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(k) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1987, c. 738, § 5; Stats.1989, c. 772, § 1; Stats.1990, c. 1086 (S.B.2214), § 2; Stats.1992, c. 890 (S.B.1394), § 2; Stats.1993, c. 1054 (A.B.1885), § 9; Stats.1994, c. 116 (S.B.133), § 1; Stats.1996, c. 739 (A.B.3073), § 1; Stats.1997, c. 196 (S.B.650), § 1; Stats.2000, c. 836 (S.B.1554), § 30; Stats.2002, c. 1013 (S.B.2026), § 22; Stats.2003, c. 607 (S.B.1077), § 14; Stats.2004, c. 204 (A.B.2552), § 3; Stats.2005, c. 658 (S.B.229), § 18.)

[1] So in enrolled bill.

§ 4980.44. Unlicensed interns; qualifications; notice to clients or patients; registration status

(a) An unlicensed marriage and family therapist intern employed under this chapter shall:

(1) Have earned at least a master's degree as specified in Section 4980.40.

(2) Be registered with the board prior to the intern performing any duties, except as otherwise provided in subdivision (e) of Section 4980.43.

(3) File for renewal of registration annually for a maximum of five years after initial registration with the board. Renewal of registration shall include filing an application for renewal, paying a renewal fee of seventy–five dollars ($75), and notifying the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the issuance of the initial registration or the registrant's last renewal.

(4) Inform each client or patient prior to performing any professional services that he or she is unlicensed and under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.

(5) Continued employment as an unlicensed marriage and family therapist intern shall cease after six years unless the requirements of subdivision (b) are met. No registration shall be renewed or reinstated beyond the six years from initial issuance regardless of whether it has been revoked.

(b) When no further renewals are possible, an applicant may apply for and obtain new intern registration status if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration. An applicant who is issued a subsequent intern registration pursuant to this subdivision may be employed or volunteer in any allowable work setting except private practice.

(Added by Stats.1995, c. 327 (A.B.610), § 3, operative Jan. 1, 1999. Amended by Stats.2000, c. 836 (S.B.1554), § 31; Stats.2001, c. 728 (S.B.724), § 37; Stats.2002, c. 1013 (S.B.2026), § 23; Stats.2003, c. 607 (S.B.1077), § 15; Stats.2004, c. 204 (A.B.2552), § 4.)

§ 4980.45. Supervision, employment or termination of interns; ratio of interns to employees or shareholders of marriage and family therapy corporations

(a) A licensed professional in private practice who is a marriage and family therapist, a psychologist, a clinical social worker, a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology, or a licensed physician who has completed a residency in psychiatry and who is described in subdivision (f) of Section 4980.40 may supervise or employ, at any one time, no more than two unlicensed marriage and family therapist registered interns in that private practice.

(b) A marriage and family therapy corporation may employ, at any one time, no more than two registered interns for each employee or shareholder who is qualified to provide supervision pursuant to subdivision (f) of Section 4980.40. In no event shall any corporation employ, at any one time, more than 10 registered interns. In no event shall any supervisor supervise, at any one time, more than two registered interns. Persons who supervise interns shall be employed full time by the professional corporation and shall be actively engaged in performing professional services at and for the professional corporation. Employment and supervision within a marriage and family therapy corporation shall be subject to all laws and regulations governing experience and supervision gained in a private practice setting.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1987, c. 738, § 7; Stats.1989, c. 772, § 2; Stats.1992, c. 890 (S.B.1394), § 3; Stats.1993, c. 1054 (A.B.1885), § 10; Stats.1994, c. 146 (A.B.3601), § 5; Stats.1999, c. 657 (A.B.1677), § 1; Stats.2001, c. 435 (S.B.349), § 15; Stats.2002, c. 1013 (S.B.2026), § 24.)

§ 4980.46. Fictitious business names

Any licensed marriage and family therapist who conducts a private practice under a fictitious business name shall not use any name that is false, misleading, or deceptive, and shall inform the patient, prior to the commencement of treatment, of the name and license designation of the owner or owners of the practice.

(Added by Stats.1988, c. 864, § 1. Amended by Stats.2002, c. 1013 (S.B.2026), § 25.)

§ 4980.48. Trainees; notice to clients and patients of unlicensed status

A trainee shall inform each client or patient, prior to performing any professional services, that he or she is unlicensed and under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology.

(Added by Stats.1989, c. 772, § 4. Amended by Stats.1993, c. 1054 (A.B.1885), § 12; Stats.2002, c. 1013 (S.B.2026), § 26.)

§ 4980.50. Examination; issuance or denial of license

(a) Every applicant who meets the educational and experience requirements and applies for a license as a marriage and family therapist shall be examined by the board. The examinations shall be as set forth in subdivision (g) of Section 4980.40. The examinations shall be given at least twice a year at a time and place and under supervision as the board may determine. The board shall examine the candidate with regard to his or her knowledge and professional skills and his or her judgment in the utilization of appropriate techniques and methods.

(b) The board shall not deny any applicant, who has submitted a complete application for examination, admission to the licensure examinations required by this section if the applicant meets the educational and experience requirements of this chapter, and has not committed any acts or engaged in any conduct that would constitute grounds to deny licensure.

(c) The board shall not deny any applicant, whose application for licensure is complete, admission to the standard written examination, nor shall the board postpone or delay any applicant's standard written examination or delay informing the candidate of the results of the standard written examination, solely upon the receipt by the board of a complaint alleging acts or conduct that would constitute grounds to deny licensure.

(d) If an applicant for examination who has passed the standard written examination is the subject of a complaint or is under board investigation for acts or conduct that, if proven to be true, would constitute grounds for the board to deny licensure, the board shall permit the applicant to take the clinical vignette written examination for licensure, but may withhold the results of the examination or notify the applicant that licensure will not be granted pending completion of the investigation.

(e) Notwithstanding Section 135, the board may deny any applicant who has previously failed either the standard written or clinical vignette written examination permission to retake either examination pending completion of the investigation of any complaints against the applicant. Nothing in this section shall prohibit the board from denying an applicant admission to any examination, withholding the results, or refusing to issue a license to any applicant when an accusation or statement of issues has been filed against the applicant pursuant to Sections 11503 and 11504 of the Government Code, respectively, or the applicant has been denied in accordance with subdivision (b) of Section 485.

(f) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.

(g) On or after January 1, 2002, no applicant shall be eligible to participate in a clinical vignette written examination if his or her passing score on the standard written examination occurred more than seven years before.

(h) An applicant who has qualified pursuant to this chapter shall be issued a license as a marriage and family therapist in the form that the board may deem appropriate.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1987, c. 738, § 8; Stats.1990, c. 1086 (S.B.2214), § 3; Stats.2000, c. 836 (S.B.1554), § 32; Stats.2001, c. 728 (S.B.724), § 38; Stats.2002, c. 1013 (S.B.2026), § 27; Stats.2003, c. 874 (S.B.363), § 9; Stats.2004, c. 909 (S.B.136), § 11, eff. Sept. 30, 2004.)

§ 4980.54. Continuing education requirements; hours; records; approved providers; subject matter; fees

(a) The Legislature recognizes that the education and experience requirements in this chapter constitute only minimal requirements to assure that an applicant is prepared and qualified to take the licensure examinations as specified in subdivision (g) of Section 4980.40 and, if he or she passes those examinations, to begin practice.

(b) In order to continuously improve the competence of licensed marriage and family therapists and as a model for all psychotherapeutic professions, the Legislature encourages all licensees to regularly engage in continuing education related to the profession or scope of practice as defined in this chapter.

(c)(1) Except as provided in subdivision (e), on and after January 1, 2000, the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of marriage and family therapy in the preceding two years, as determined by the board.

(2) For those persons renewing during 1999, the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 18 hours of approved continuing education in or relevant to the field of marriage and family therapy, as determined by the board. The coursework of continuing education described in this paragraph may be taken on or after the effective date of the continuing education regulations adopted by the board pursuant to the other provisions of this section.

(d) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(e) The board may establish exceptions from the continuing education requirements of this section for good cause, as defined by the board.

(f) The continuing education shall be obtained from one of the following sources:

(1) An accredited school or state–approved school that meets the requirements set forth in Section 4980.40. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, including, but not limited to, a professional marriage and family therapist association, a licensed health facility, a governmental entity, a continuing education unit of an accredited four–year institution of higher learning, or a mental health professional association, approved by the board.

(3) The board shall establish, by regulation, a procedure for approving providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2), shall adhere to procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

(g) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding or the practice of marriage and family therapy.

(2) Aspects of the discipline of marriage and family therapy in which significant recent developments have occurred.

(3) Aspects of other disciplines that enhance the understanding or the practice of marriage and family therapy.

(h) A system of continuing education for licensed marriage and family therapists shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(i) On and after January 1, 1997, the board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For purposes of this subdivision, a provider of continuing education as described in

paragraph (1) of subdivision (f) shall be deemed to be an approved provider.

(j) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1987, c. 738, § 9; Stats.1995, c. 839 (S.B.26), § 2; Stats.1997, c. 196 (S.B.650), § 2; Stats.2002, c. 1013 (S.B.2026), § 28; Stats.2003, c. 874 (S.B.363), § 10.)

§ 4980.55. Statements of experience, education, specialties, etc.

As a model for all therapeutic professions, and to acknowledge respect and regard for the consuming public, all marriage and family therapists are encouraged to provide to each client, at an appropriate time and within the context of the psychotherapeutic relationship, an accurate and informative statement of the therapist's experience, education, specialities, professional orientation, and any other information deemed appropriate by the licensee.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.2002, c. 1013 (S.B.2026), § 29.)

§ 4980.57. Licensees who began graduate study before January 1, 2004; required continuing education course

(a) The board shall require a licensee who began graduate study prior to January 1, 2004, to take a continuing education course during his or her first renewal period after the operative date of this section in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. On and after January 1, 2005, the course shall consist of not less than seven hours of training. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement.

(b) Continuing education courses taken pursuant to this section shall be applied to the 36 hours of approved continuing education required under paragraph (1) of subdivision (c) of Section 4980.54.

(c) This section shall become operative on January 1, 2004.

(Added by Stats.2002, c. 481 (S.B.564), § 5, operative Jan. 1, 2004. Amended by Stats.2003, c. 607 (S.B.1077), § 16, operative Jan. 1, 2004.)

Operative Effect

Section 4980.57, added by Stats.1983, c. 1234 (A.B.890), § 9.5, relating to continuing education in spousal or partner abuse, failed to become operative under its own terms. Section 5 of Stats.2002, c. 481 (S.B.564), added § 4980.57, operative Jan. 1, 2004, requiring continuing education courses, in spousal or partner abuse assessment, detection, and intervention strategies for specified licensees in their first renewal period after the operative date of the section. Section 30 of Stats.2002, c. 1013 (S.B.2026), provided for repeal of § 4980.57.

§ 4980.60. Rules and regulations

(a) The board may adopt those rules and regulations as may be necessary to enable it to carry into effect the provisions of this chapter. The adoption, amendment, or repeal of those rules and regulations shall be made in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The board may, by rules or regulations, adopt, amend, or repeal rules of advertising and professional conduct appropriate to the establishment and maintenance of a high standard of integrity in the profession, provided that the rules or regulations are not inconsistent with Section 4982. Every person who holds a license to practice marriage and family therapy shall be governed by the rules of professional conduct.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.2002, c. 1013 (S.B.2026), § 31.)

§ 4980.70. Additional personnel

Except as provided by Section 159.5, the board may employ whatever additional personnel is necessary to carry out the provisions of this chapter.

(Added by Stats.1986, c. 1365, § 4.)

§ 4980.80. Reciprocity; equivalent requirements; payment of fees; further conditions

The board may issue a license to any person who, at the time of application, has held for at least two years a valid license issued by a board of marriage counselor examiners, marriage therapist examiners, or corresponding authority of any state, if the education and supervised experience requirements are substantially the equivalent of this chapter and the person successfully completes the board administered licensing examinations as specified by subdivision (g) of Section 4980.40 and pays the fees specified. Issuance of the license is further conditioned upon the person's completion of the following coursework or training:

(a) A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors that shall include areas of study as specified in Section 4980.41.

(b) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(c) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25 and any regulations promulgated thereunder.

(d) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(e)(1) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other requirements for licensure or in a separate course.

(2) On and after January 1, 2004, a minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(f) On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(g) On and after January 1, 2003, a minimum of a two semester or three quarter unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(h) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1987, c. 738, § 10; Stats.1996, c. 739 (A.B.3073), § 2; Stats.1998, c. 879 (S.B.2238), § 5; Stats.2000, c. 836 (S.B.1554), § 33; Stats.2001, c. 159 (S.B.662), § 16; Stats.2002, c. 481 (S.B.564), § 6; Stats.2003, c. 874 (S.B.363), § 11.)

§ 4980.90. Persons with education and experience gained outside California; requirements

(a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter and if the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board.

(b) Education gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed all of the following:

(1) A two semester– or three quarter–unit course in California law and professional ethics for marriage, family, and child counselors that shall include areas of study as specified in Section 4980.41.

(2) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(3) A minimum of 10 contact hours of training or coursework in sexuality as specified in Section 25 and any regulations promulgated thereunder.

(4) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(5) (A) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other educational requirements for licensure or in a separate course.

(B) On and after January 1, 2004, a minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(6) On and after January 1, 2003, a minimum of a two semester– or three quarter–unit survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(7) On and after January 1, 2003, a minimum of a two semester– or three quarter–unit survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(8) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.

(c) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant has been granted a degree in a single integrated program primarily designed to train marriage, family, and child counselors and if the applicant's education meets the requirements of Sections 4980.37 and 4980.40. The degree title and number of units in the degree program need not be identical to those required by subdivision (a) of Section 4980.40. If the applicant's degree does not contain the number of units required by subdivision (a) of Section 4980.40, the board may, in its discretion, accept the applicant's education as substantially equivalent if the applicant's degree otherwise complies with this section and the applicant completes the units required by subdivision (a) of Section 4980.40.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1987, c. 738, § 11; Stats.1989, c. 772, § 5; Stats.1994, c. 26 (A.B.1807), § 183, eff. March 30, 1994; Stats.1998, c. 879 (S.B.2238), § 6; Stats.2000, c. 836 (S.B.1554), § 34; Stats.2001, c. 159 (S.B.662), § 17; Stats.2002, c. 481 (S.B.564), § 7; Stats.2004, c. 183 (A.B.3082), § 9.)

§ 4981. Application of article

This article applies to licenses to engage in the business of marriage and family therapy, and does not apply to the licenses provided for in Article 5 (commencing with Section 4986) except that the board shall have all powers provided in this article not inconsistent with this chapter.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.2002, c. 1013 (S.B.2026), § 34.)

Article 2 DENIAL, SUSPENSION AND REVOCATION

§ 4982. Unprofessional conduct

The board may refuse to issue any registration or license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self–administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage and family therapy services.

(d) Gross negligence or incompetence in the performance of marriage and family therapy.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage and family therapist.

(*l*) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee or registered intern

under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(*o*) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered intern or trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a trainee or registered intern under one's supervision or control to perform, or permitting the trainee or registered intern to hold himself or herself out as competent to perform, professional services beyond the trainee's or registered intern's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1987, c. 738, § 12; Stats.1989, c. 772, § 6; Stats.1992, c. 890 (S.B.1394), § 4; Stats.1993, c. 1054 (A.B.1885), § 13; Stats.1999, c. 657 (A.B.1677), § 3; Stats.2000, c. 135 (A.B.2539), § 4; Stats.2001, c. 435 (S.B.349), § 16; Stats.2002, c. 1013 (S.B.2026), § 35; Stats.2003, c. 607 (S.B.1077), § 17.)

§ 4982.05. Limitations period

(a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven–year limitations period provided for by subdivision (a) and the 10–year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the grounds for disciplinary action, or within 10 years after the act or omission alleged as the grounds for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

(g) For purposes of this section, "discovers" means the later of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:

(1) The date the board received a complaint or report describing the act or omission.

(2) The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.

(3) The date the board receives from the complainant a written release of information pertaining to the complainant's diagnosis and treatment.

(Added by Stats.1999, c. 459 (S.B.809), § 2. Amended by Stats.2001, c. 617 (A.B.1616), § 4; Stats.2002, c. 664 (A.B.3034), § 9; Stats.2005, c. 658 (S.B.229), § 19.)

§ 4982.1. Mental illness or chemical dependency; grounds for refusal to license or register

The board may refuse to issue any registration or license whenever it appears that an applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 shall apply to any denial of a license or registration pursuant to this section.

(Added by Stats.1992, c. 384 (S.B.1773), § 4.)

§ 4982.15. Placing of license or registration on probation; circumstances

(a) The board may place a license or registration on probation under the following circumstances:

(1) In lieu of, or in addition to, any order of the board suspending or revoking the license or registration of any licensee or intern.

(2) Upon the issuance of a license to an individual who has been guilty of unprofessional conduct, but who had otherwise completed all education and training and experience required for licensure.

(3) As a condition upon the reissuance or reinstatement of any license that has been suspended or revoked by the board.

(b) The board may adopt regulations establishing a monitoring program to ensure compliance with any terms or conditions of probation imposed by the board pursuant to subdivision (a). The cost of probation or monitoring may be ordered to be paid by the licensee, registrant, or applicant.

(c) The board, in its discretion, may require any licensee or registrant who has been placed on probation, or whose license or registration has been suspended, to obtain additional professional training, and to pass an examination upon completion of that training, and to pay any necessary examination fee. The examination may be written, oral, or a practical or clinical examination.

(Formerly § 4982.2, added by Stats.1986, c. 1365, § 4. Renumbered § 4982.15 and amended by Stats.1994, c. 26 (A.B.1807), § 184, eff. March 30, 1994.)

§ 4982.2. Petition for reinstatement or modification of penalty; notice; content; hearing

(a) A licensed marriage and family therapist, licensed clinical social worker, or educational psychologist whose license has been revoked or suspended or who has been placed on probation may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the decision ordering the disciplinary action, or if the order of the board, or any portion of it, is stayed by the board itself, or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) At least three years for reinstatement of a license that was revoked for unprofessional conduct, except that the board may, in its sole discretion at the time of adoption, specify in its order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of any probation period of three years, or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition may be heard by the board itself, or the board may assign the petition to an administrative law judge pursuant to Section 11512 of the Government Code. The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of production and proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition. The board, when it is hearing the petition itself, or an administrative law judge sitting for the board, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time his or her license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

(c) The hearing may be continued from time to time as the board or the administrative law judge deems appropriate.

(d) The board itself, or the administrative law judge if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision. In a decision granting a petition reinstating a license or modifying a penalty, the board itself, or the administrative law judge may impose any terms and conditions that the agency deems reasonably appropriate, including those set forth in Sections 823 and 4982.15. Where a petition is heard by an administrative law judge sitting alone, the administrative law judge shall prepare a proposed decision and submit it to the board.

(e) The board may take action with respect to the proposed decision and petition as it deems appropriate.

(f) The petition shall be on a form provided by the board, and shall state any facts and information as may be required by the board including, but not limited to, proof of compliance with the terms and conditions of the underlying disciplinary order.

(g) The petitioner shall pay a fingerprinting fee and provide a current set of his or her fingerprints to the board. The petitioner shall execute a form authorizing release to the board or its designee, of all information concerning the petitioner's current physical and mental condition. Information provided to the board pursuant to the release shall be confidential and shall not be subject to discovery or subpoena in any other proceeding, and shall not be admissible in any action, other than before the board, to determine the petitioner's fitness to practice as required by Section 822.

(h) The petition shall be verified by the petitioner, who shall file an original and sufficient copies of the petition, together with any supporting documents, for the members of the board, the administrative law judge, and the Attorney General.

(i) The board may delegate to its executive officer authority to order investigation of the contents of the petition, but in no case, may the hearing on the petition be delayed more than 180 days from its filing without the consent of the petitioner.

(j) The petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets.

(k) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court–imposed probation or parole, or the petitioner is required to register pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(*l*) Except in those cases where the petitioner has been disciplined for violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(Added by Stats.1994, c. 26 (A.B.1807), § 185, eff. March 30, 1994. Amended by Stats.2002, c. 1013 (S.B.2026), § 36; Stats.2003, c. 607 (S.B.1077), § 18.)

§ 4982.25. Denial of application or suspension or revocation of license or registration; grounds

The board may deny any application, or may suspend or revoke any license or registration issued under this chapter, for any of the following:

(a) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States, or by any other governmental agency, on a license, certificate, or registration to practice marriage and family therapy, or any other healing art, shall constitute unprofessional conduct. A certified copy of the disciplinary action decision or judgment shall be conclusive evidence of that action.

(b) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker or educational psychologist shall also constitute grounds for disciplinary action for unprofessional conduct against the licensee or registrant under this chapter.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1987, c. 738, § 13; Stats.1992, c. 384 (S.B.1773), § 5; Stats.1998, c. 879 (S.B.2238), § 7; Stats.2002, c. 1013 (S.B.2026), § 37.)

§ 4982.26. Decision containing finding that licensee or registrant engaged in sexual contact with patient or former patient; order of revocation

* * * <u>The board shall revoke any license</u> issued under this chapter <u>upon a decision made</u> in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act * * *. The revocation shall not be stayed by the administrative law judge <u>or the board</u>.

(Added by Stats.1994, c. 1274 (S.B.2039), § 32. Amended by Stats.2005, c. 658 (S.B.229), § 20.)

§ 4982.3. Procedure

The proceedings conducted under this article shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats.1986, c. 1365, § 4.)

Article 3 PENALTIES

§ 4983. Violation; misdemeanor; punishment

Any person who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both.
(Added by Stats.1986, c. 1365, § 4.)

§ 4983.1. Injunction

In addition to other proceedings provided for in this chapter, whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, an offense against this chapter, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of the board, the Attorney General, or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.
(Added by Stats.1986, c. 1365, § 4.)

Article 4 REVENUE

§ 4984. Expiration of licenses; renewal of unexpired licenses

(a) Licenses issued under this chapter shall expire no more than 24 months after the issue date. The expiration date of the original license shall be set by the board.

(b) To renew an unexpired license, the licensee, on or before the expiration date of the license, shall do all of the following:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a two–year renewal fee prescribed by the board.

(3) Certify compliance with the continuing education requirements set forth in Section 4980.54.

(4) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.
(Added by Stats.1986, c. 1365, § 4. Amended by Stats.2000, c. 836 (S.B.1554), § 35.)

§ 4984.1. Renewal of expired licenses

A license that has expired may be renewed at any time within five years after its expiration on filing an application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is renewed after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter.
(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1998, c. 879 (S.B.2238), § 8.)

§ 4984.2. Renewal of suspended license; effect of renewal

A suspended license is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the licensee, while it remains suspended and until it is reinstated, to engage in the activity to which the license relates, or in any other activity or conduct in violation of the order or judgment by which it was suspended.
(Added by Stats.1986, c. 1365, § 4.)

§ 4984.3. Revoked license; reinstatement after expiration

A revoked license is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the licensee shall, as a condition precedent to its reinstatement, pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.
(Added by Stats.1986, c. 1365, § 4.)

§ 4984.4. Time limit for renewal after expiration; new license

A license that is not renewed within five years after its expiration may not be renewed, restored, reinstated, or reissued thereafter, but the licensee may apply for and obtain a new license if:

(a) No fact, circumstance, or condition exists that, if the license were issued, would justify its revocation or suspension.

(b) He or she pays the fees that would be required if he or she were applying for a license for the first time.

(c) He or she takes and passes the current licensing examinations as specified in subdivision (g) of Section 4980.40.
(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1987, c. 738, § 14; Stats.1998, c. 879 (S.B.2238), § 9; Stats.2003, c. 874 (S.B.363), § 12.)

§ 4984.5. Report and payment of revenue

The board shall report each month to the Controller the amount and source of all revenue received pursuant to this chapter and at the same time pay the entire amount thereof into the State Treasury for credit to the Behavioral Sciences Fund.
(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1996, c. 829 (A.B.3473), § 87.)

§ 4984.6. Use of Behavioral Sciences Fund; record–keeping; surpluses

(a) The Behavioral Sciences Fund * * * shall be used for the purposes of carrying out and enforcing the provisions of this chapter.

(b) The board shall keep any records as will reasonably ensure that funds expended in the administration of each licensing or registration category shall bear a reasonable relation to the revenue derived from each category, and shall so notify the department no later than May 31 of each year.

(c) Surpluses, if any, may be used in such a way so as to bear a reasonable relation to the revenue derived from each category, and may include, but not be limited to, expenditures for education and research related to each of the licensing or registration categories.
(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1996, c. 829 (A.B.3473), § 88; Stats.2005, c. 74 (A.B.139), § 14, eff. July 19, 2005.)

§ 4984.7. Fee schedule

The amount of the fees prescribed by this chapter that relate to licensing of persons to engage in the business of marriage and family therapy is that established by the following schedule:

(a) The fee for applications for examination received on or after January 1, 1987, shall be one hundred dollars ($100).

(b) The fee for issuance of the initial license shall be a maximum of one hundred eighty dollars ($180).

(c) For those persons whose license expires on or after January 1, 1996, the renewal fee shall be a maximum of one hundred eighty dollars ($180).

(d) The delinquency fee shall be ninety dollars ($90). Any person who permits his or her license to become delinquent may have it restored only upon the payment of all fees that he or she would have paid if the license had not become delinquent, plus the payment of any and all outstanding delinquency fees.

(e) For those persons registering as interns on or after January 1, 1996, the registration fee shall be seventy–five dollars ($75).

(f) For those persons whose registration as an intern expires on or after January 1, 1996, the renewal fee shall be seventy–five dollars ($75).

(g) The standard written examination fee shall be one hundred dollars ($100). After successfully passing the standard written examination, each applicant for the clinical vignette written examination shall submit one hundred dollars ($100). Applicants failing to appear for any examination, once having been scheduled, shall forfeit any examination fees paid. Effective January 1, 2005, the examination fees for the standard written and clinical vignette written examinations shall be based on the actual cost to the board of developing, purchasing, and grading of each examination, plus the

actual cost to the board of administering each examination. The written examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(h) An applicant who fails any standard or clinical vignette written examination may within one year from the notification date of that failure, retake the examination as regularly scheduled without further application upon payment of one hundred dollars ($100) for the standard written reexamination and one hundred dollars ($100) for the clinical vignette written reexamination. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all fees required. Persons failing to appear for the reexamination, once having been scheduled, shall forfeit any reexamination fees paid.

(i) The fee for rescoring any written examination shall be twenty dollars ($20).

(j) The fee for issuance of any replacement registration, license, or certificate shall be twenty dollars ($20).

(k) The fee for issuance of a certificate or letter of good standing shall be twenty–five dollars ($25).

With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1988, c. 1090, § 1; Stats.1990, c. 547 (S.B.2222), § 1; Stats.1995, c. 839 (S.B.26), § 2.5; Stats.1998, c. 879 (S.B.2238), § 10; Stats.2002, c. 1013 (S.B.2026), § 38; Stats.2004, c. 909 (S.B.136), § 12, eff. Sept. 30, 2004.)

§ 4984.75. Additional fees

In addition to the fees charged pursuant to Section 4984.7 for the biennial renewal of a license pursuant to Section 4984, the board shall collect an additional fee of ten dollars ($10) at the time of renewal. The board shall transfer this amount to the Controller who shall deposit the funds in the Mental Health Practitioner Education Fund.

(Added by Stats.2003, c. 437 (A.B.938), § 3.)

§ 4984.8. Inactive licenses

A licensed marriage and family therapist may apply to the board to request that his or her license be placed on inactive status. A licensee who holds an inactive license shall pay a biennial fee of half of the active renewal fee and shall be exempt from continuing education requirements specified in Section 4980.54, but shall otherwise be subject to this chapter and shall not engage in the practice of marriage and family therapy in this state. A licensee on inactive status who has not committed any acts or crimes constituting grounds for denial of licensure may, upon his or her request, have his or her license to practice marriage and family therapy placed on active status. A licensee requesting his or her license to be placed on active status at any time between a renewal cycle shall pay the remaining half of the renewal fee. A licensee requesting to reactivate from an inactive status whose license will expire less than one year from the date of the request shall be required to complete 18 hours of continuing education for license renewal. A licensee requesting to reactivate from an inactive status whose license will expire more than one year from the date of the request shall be required to complete 36 hours of continuing education for license renewal.

(Added by Stats.1998, c. 879 (S.B.2238), § 11. Amended by Stats.2002, c. 1013 (S.B.2026), § 39; Stats.2003, c. 607 (S.B.1077), § 19.)

§ 4984.9. Written notice of name change; licensees or registrants

A licensee or registrant shall give written notice to the board of a name change within 30 days after each change, giving both the old and new names. A copy of the legal document authorizing the name change, such as a court order or marriage certificate, shall be submitted with the notice.

(Added by Stats.1999, c. 655 (S.B.1308), § 85.)

Article 5 LICENSED EDUCATIONAL PSYCHOLOGISTS

§ 4986. Practice by licensees

Persons licensed under this article by the board may practice pursuant to this article.

(Added by Stats.1986, c. 1365, § 4.)

§ 4986.10. Professional functions authorized

(a) A licensed educational psychologist shall be authorized to perform any of the following professional functions pertaining to academic learning processes or the educational system or both:

(1) Educational evaluation, diagnosis, and test interpretation limited to assessment of academic ability, learning patterns, achievement, motivation, and personality factors directly related to academic learning problems.

(2) Counseling services for children or adults for amelioration of academic learning problems.

(3) Educational consultation, research, and direct educational services.

(b) It is unlawful for any person to engage in the practice of educational psychology unless he or she holds a valid, unexpired, and unrevoked license under this article.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.2000, c. 836 (S.B.1554), § 36.)

§ 4986.20. Qualifications for license

A person who desires a license under this article shall meet all of the following qualifications:

(a) He or she shall possess at least a master's degree in psychology, educational psychology, school psychology, or counseling and guidance, or a degree deemed equivalent by the board under regulations duly adopted under this article. This degree or training shall be obtained from educational institutions approved by the board according to the regulations duly adopted under this article.

(b) He or she shall be at least 18 years of age.

(c) He or she shall not have committed any acts or crimes constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of any crime in this or any other state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(d) He or she shall have successfully completed 60 semester hours of postgraduate work devoted to pupil personnel services or have experience deemed equivalent by the board in regulations duly adopted under this chapter.

(e) He or she shall furnish proof of three years of full–time experience as a credentialed school psychologist in the public schools or experience which the board deems equivalent. If the applicant provides proof of having completed one year's internship working full time as a school psychologist intern in the public schools in an accredited internship program, one year's experience shall be credited toward this requirement.

(f) He or she shall be examined by the board with respect to the professional functions authorized by this article.

(g) He or she shall have at least one year of supervised professional experience in an accredited school psychology program, or under the direction of a licensed psychologist, or a suitable alternative experience as determined by the board in regulations duly adopted under this chapter.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1994, c. 474 (A.B.2956), § 2; Stats.2000, c. 836 (S.B.1554), § 37; Stats.2001, c. 728 (S.B.724), § 39.)

§ 4986.21. Eligibility to take examination; destruction of examination materials

(a) Only individuals who have the qualifications prescribed by the board under this chapter are eligible to take the examination. Every

applicant who is issued a license as an educational psychologist shall be examined by the board.

(b) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.

(Added by Stats.2000, c. 836 (S.B.1554), § 38. Amended by Stats.2001, c. 728 (S.B.724), § 40; Stats.2004, c. 909 (S.B.136), § 13, eff. Sept. 30, 2004.)

§ 4986.30. Continuing education program

The board may, in its discretion, provide for a continuing education program in connection with the professional functions and courses described in this article.

(Added by Stats.1986, c. 1365, § 4.)

§ 4986.40. Issuance of license

The board shall issue an educational psychologist license to all applicants who meet the requirements of this article and who pay the board the fees required by this chapter.

(Added by Stats.1986, c. 1365, § 4.)

§ 4986.41. Display of license

A licensee shall display his or her license in a conspicuous place in the licensee's primary place of practice.

(Added by Stats.1998, c. 879 (S.B.2238), § 12.)

§ 4986.42. Expiration of licenses; renewal

(a) Licenses issued under this chapter shall expire no later than 24 months after the issue date. The expiration date of the original license shall be set by the board.

(b) To renew an unexpired license, the licensee shall, on or before the expiration date of the license, do the following:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a two–year renewal fee prescribed by the board.

(3) Notify the board of whether he or she has been convicted, as defined in Section 490, of any misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

(Added by Stats.2000, c. 836 (S.B.1554), § 39.)

§ 4986.43. Renewal of expired licenses; fees

A license that has expired may be renewed at any time within five years after its expiration on filing an application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is renewed after its expiration, the licensee shall, prior to renewal, pay the delinquency fee prescribed by this chapter.

(Added by Stats.2000, c. 836 (S.B.1554), § 40.)

§ 4986.44. Suspended licenses; expiration and renewal

A suspended license is subject to expiration and shall be renewed as provided in this article. A person with a suspended license shall not, until the reinstatement of his or her license, engage in any activity to which the license relates, or any other activity or conduct in violation of the order or judgment by which the license was suspended.

(Added by Stats.2000, c. 836 (S.B.1554), § 41.)

§ 4986.45. Revoked licenses; expiration

A revoked license is subject to expiration as provided in this article and shall not be renewed. Upon reinstatement of a license after its expiration, a licensee shall, prior to reinstatement, pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated and any delinquency fee which may have accrued.

(Added by Stats.2000, c. 836 (S.B.1554), § 42.)

§ 4986.46. Failure to renew license; application for new license

A license that is not renewed within five years after its expiration may not be renewed, restored, reinstated, or reissued thereafter. A licensee may apply for and obtain a new license if he or she satisfies the following:

(a) No fact, circumstance, or condition exists that, if the license were issued, would justify its revocation or suspension.

(b) He or she pays the fees that would be required if he or she were applying for a license for the first time.

(c) He or she takes and passes the current licensing examination.

(Added by Stats.2000, c. 836 (S.B.1554), § 43.)

§ 4986.47. Written notice of name change

A licensee shall give written notice to the board of a name change within 30 days after each change, providing both the old and new names. A copy of the legal document affecting the name change, such as a court order or marriage certificate, shall be submitted with the notice.

(Added by Stats.2000, c. 836 (S.B.1554), § 44. Amended by Stats.2001, c. 728 (S.B.724), § 41.)

§ 4986.50. Use of title by persons not licensed; prohibition

It is unlawful for any person to use any title or letters which imply that he or she is a licensed educational psychologist unless at the time of so doing he or she holds a valid, unexpired and unrevoked license issued under this article.

(Added by Stats.1986, c. 1365, § 4.)

§ 4986.70. Refusal to issue, or suspension or revocation of license; unprofessional conduct

The board may refuse to issue a license or may suspend or revoke the license of any licensee if he or she has been guilty of unprofessional conduct that has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct includes, but is not limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions and duties of an educational psychologist, the record of conviction being conclusive evidence thereof.

(b) Securing a license by fraud or deceit.

(c) Using any narcotic as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any hypnotic drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public and to an extent that the action impairs his or her ability to perform his or her work as a licensed educational psychologist with safety to the public.

(d) Improper advertising.

(e) Violating or conspiring to violate the terms of this article.

(f) Committing a dishonest or fraudulent act as a licensed educational psychologist resulting in substantial injury to another.

(g) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States, or by any other governmental agency, on a license, certificate, or registration to practice educational psychology or any other healing art, shall constitute unprofessional conduct. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(h) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker or marriage and family therapist shall constitute grounds for disciplinary action for unprofessional conduct against the licensee or registrant under this chapter.

(i) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(j) Gross negligence or incompetence in the performance of licensed educational psychology.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1998, c. 879 (S.B.2238), § 13; Stats.1999, c. 657 (A.B.1677), § 4; Stats.2000, c. 836 (S.B.1554), § 46; Stats.2002, c. 1013 (S.B.2026), § 40.)

§ 4986.71. Decision containing finding that licensee engaged in sexual contact with patient or former patient; order of revocation

The board shall revoke any license issued under this chapter upon a decision made in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge or the board.

(Added by Stats.1994, c. 1274 (S.B.2039), § 33. Amended by Stats.2005, c. 658 (S.B.229), § 21.)

§ 4986.75. Mental illness or chemical dependency; grounds for refusal to license

The board may refuse to issue any license whenever it appears that an applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 shall apply to any denial of a license pursuant to this section.

(Added by Stats.1992, c. 384 (S.B.1773), § 6.)

§ 4986.80. Fee schedule

The amount of the fees prescribed by this chapter that relate to the licensing of educational psychologists is that established by the following schedule:

(a) Persons applying for an original license after July 1, 1986, shall pay an application fee of one hundred dollars ($100).

(b) The fee for issuance of the initial license shall be a maximum of one hundred fifty dollars ($150).

(c) Persons whose license expires after January 1, 1991, shall pay a renewal fee of a maximum of one hundred fifty dollars ($150).

(d) The delinquency fee shall be seventy–five dollars ($75). A person who permits his or her license to become delinquent may have it restored only upon the payment of all fees that he or she would have paid if the license had not become delinquent, plus the payment of any and all delinquency fees.

(e) The written examination fee shall be one hundred dollars ($100). Applicants failing to appear for an examination, once having been scheduled, shall forfeit any examination fees paid.

(f) The fee for each reexamination shall be the fee for each examination specified in subdivision (e). An applicant who has failed the written examination may within one year from the notification date of failure, retake that examination as regularly scheduled without further application. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all fees required. Persons failing to appear for reexamination, once having been scheduled, shall forfeit any reexamination fees paid.

(g) The fee for rescoring a written examination shall be twenty dollars ($20).

(h) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(i) The fee for issuance of a certificate or letter of good standing shall be twenty–five dollars ($25).

With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1988, c. 1090, § 3; Stats.1990, c. 547 (S.B.2222), § 2; Stats.1995, c. 839 (S.B.26), § 3; Stats.1998, c. 879 (S.B.2238), § 14; Stats.2004, c. 909 (S.B.136), § 14, eff. Sept. 30, 2004.)

§ 4986.81. Violations; misdemeanor

Any person who violates any of the provisions of this article is guilty of a misdemeanor.

(Added by Stats.1986, c. 1365, § 4.)

§ 4986.82. Inactive licenses

A licensed educational psychologist may apply to the board to request that his or her license be placed on inactive status. Licensees who hold an inactive license shall pay a biennial fee of half of the active renewal fee. Licensees shall be subject to this chapter and shall not engage in the practice of educational psychology in this state. Licensees on inactive status who have not committed any acts or crimes constituting grounds for denial of licensure may, upon their request, have their license to practice educational psychology placed on active status. Licensees requesting their license be placed on active status between renewal cycles shall pay the remaining half of their renewal fee.

(Added by Stats.1998, c. 879 (S.B.2238), § 15.)

§ 4986.90. Injunction

In addition to other proceedings provided for in this article, whenever any person has engaged, or is about to engage in any acts or practices which constitute, or will constitute, an offense against this article, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining that conduct on application of the board, the Attorney General, or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(Added by Stats.1986, c. 1365, § 4.)

§ 4987. Rules of professional conduct

The board may, by rules or regulations, adopt, amend or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession, provided those rules or regulations are not inconsistent with Section 4986.70. Every person licensed under this article shall be governed by those rules of professional conduct.

(Added by Stats.1986, c. 1365, § 4.)

Article 6 MARRIAGE AND FAMILY THERAPY CORPORATIONS

§ 4987.5. Definition

A marriage and family therapy corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are marriage and family therapists, physicians and surgeons, psychologists, licensed clinical social workers, registered nurses, chiropractors, or acupuncturists are in compliance with the Moscone–Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, and any other statute or regulation pertaining to that corporation and the conduct of its affairs. With respect to a marriage and family therapy corporation, the governmental agency referred to in the Moscone–Knox Professional Corporation Act is the Board of Behavioral Sciences.

(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1996, c. 829 (A.B.3473), § 89; Stats.1999, c. 657 (A.B.1677), § 5; Stats.2002, c. 1013 (S.B.2026), § 41.)

§ 4987.6. Unprofessional conduct

It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or

conspire to violate, any provision or term of this article, the Moscone–Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), or any regulations duly adopted under those laws.
(Added by Stats.1999, c. 657 (A.B.1677), § 7.)

§ 4987.7. Name

The name of a marriage and family therapy corporation shall contain one or more of the words "marriage," "family," or "child" together with one or more of the words "counseling," "counselor," "therapy," or "therapist," and wording or abbreviations denoting corporate existence. A marriage and family therapy corporation that conducts business under a fictitious business name shall not use any name that is false, misleading or deceptive, and shall inform the patient, prior to the commencement of treatment, that the business is conducted by a marriage and family therapy corporation.
(Formerly § 4987.8. Renumbered § 4987.7 and amended by Stats.1999, c. 657 (A.B.1677), § 9. Amended by Stats.2002, c. 1013 (S.B.2026), § 42; Stats.2004, c. 204 (A.B.2552), § 6.)

§ 4987.8. Directors, shareholders, and officers; necessity of license

Except as provided in Section 13403 of the Corporations Code, each director, shareholder, and officer of a marriage and family therapy corporation shall be a licensed person as defined in the Moscone–Knox Professional Corporation Act.
(Formerly § 4987.9, added by Stats.1986, c. 1365, § 4. Amended by Stats.1988, c. 864, § 2. Renumbered § 4987.8 and amended by Stats.1999, c. 657 (A.B.1677), § 10. Amended by Stats.2002, c. 1013 (S.B.2026), § 43.)

§ 4988. Income for professional services not to accrue to disqualified shareholders

The income of a marriage and family therapy corporation attributable to professional services rendered while a shareholder is a disqualified person (as defined in the Moscone–Knox Professional Corporation Act) shall not in any manner accrue to the benefit of that shareholder or his or her shares in the marriage and family therapy corporation.
(Added by Stats.1986, c. 1365, § 4. Amended by Stats.2002, c. 1013 (S.B.2026), § 44.)

§ 4988.1. Scope of practice

A marriage and family therapy corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by statutes, rules and regulations to the same extent as a person holding a license as a marriage and family therapist.
(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1999, c. 657 (A.B.1677), § 11; Stats.2002, c. 1013 (S.B.2026), § 45.)

§ 4988.2. Rules and regulations

The board may formulate and enforce rules and regulations to carry out the purposes and objectives of this article, including rules and regulations requiring (a) that the articles of incorporation or bylaws of a marriage and family therapy corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person (as defined in the Moscone–Knox Professional Corporation Act), or a deceased person, shall be sold to the corporation or to the remaining shareholders of the corporation within the time that rules and regulations may provide, and (b) that a marriage and family therapy corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.
(Added by Stats.1986, c. 1365, § 4. Amended by Stats.1999, c. 657 (A.B.1677), § 12; Stats.2002, c. 1013 (S.B.2026), § 46.)

Article 7 REVIEW

§ 4989. Powers and duties of board; date of review

The powers and duties of the board, as set forth in this chapter, shall be subject to the review required by Division 1.2 (commencing with Section 473). The review shall be performed as if this chapter were scheduled to become inoperative on July 1, 2005, and would be repealed as of January 1, 2006, as described in Section 473.1.
(Added by Stats.1994, c. 908 (S.B.2036), § 37. Amended by Stats.1998, c. 589 (S.B.1983), § 11.)

BUSINESS AND PROFESSIONS CODE — SOCIAL WORKERS

Chapter 14 SOCIAL WORKERS

Article 4 CLINICAL SOCIAL WORKERS

§ 4996. Necessity of license; unauthorized representation as licensee; misdemeanor; status as health care practitioner

(a) Only individuals who have received a license under this article may style themselves as "Licensed Clinical Social Workers." Every individual who styles himself or herself or who holds himself or herself out to be a licensed clinical social worker, or who uses any words or symbols indicating or tending to indicate that he or she is a licensed clinical social worker, without holding his or her license in good standing under this article, is guilty of a misdemeanor.

(b) It is unlawful for any person to engage in the practice of clinical social work unless at the time of so doing such person holds a valid, unexpired, and unrevoked license under this article.

(c) A clinical social worker licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care practitioner subject to the provisions of Section 2290.5 pursuant to subdivision (b) of that section.
(Added by Stats.1985, c. 820, § 1. Amended by Stats.2003, c. 20 (A.B.116), § 5.)

§ 4996.1. Issuance of license

The board shall issue a clinical social worker license to each applicant who qualifies pursuant to this article and successfully passes a board administered written or oral examination or both examinations. An applicant who has successfully passed a previously administered written examination may be subsequently required to take and pass another written examination.
(Added by Stats.1985, c. 820, § 1. Amended by Stats.2003, c. 874 (S.B.363), § 13.)

§ 4996.2. Qualifications for license

Each applicant shall furnish evidence satisfactory to the board that he or she complies with all of the following requirements:

(a) Is at least 21 years of age.

(b) Has received a master's degree from an accredited school of social work.

(c) Has had two years of supervised post–master's degree experience, as specified in Section 4996.20, 4996.21, or 4996.23.

(d) Has not committed any crimes or acts constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of any crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(e) Has completed adequate instruction and training in the subject of alcoholism and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after January 1, 1986.

(f) Has completed instruction and training in spousal or partner abuse assessment, detection, and intervention. This requirement applies to an applicant who began graduate training during the period commencing on January 1, 1995, and ending on December 31, 2003. An applicant who began graduate training on or after January 1, 2004, shall complete a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. This requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

(g) Has completed a minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 1807 of Title 16 of the California Code of Regulations. This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

(h) Has completed a minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 1807.2 of Title 16 of the California Code of Regulations. This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

(Added by Stats.1985, c. 820, § 1. Amended by Stats.1988, c. 1091, § 3; Stats.1993, c. 1234 (A.B.890), § 10; Stats.1994, c. 474 (A.B.2956), § 4; Stats.2001, c. 728 (S.B.724), § 45; Stats.2002, c. 481 (S.B.564), § 8.)

§ 4996.3. Application and examination fees; deposit

(a) Each application for the standard written examination received on or after January 1, 1999, shall be accompanied by an application fee of one hundred dollars ($100) and a fee of up to one hundred fifty dollars ($150), including the standard written examination fee and related administrative costs for the standard written examination. After successfully passing the standard written examination, each applicant shall submit one hundred dollars ($100) for the clinical vignette written examination. Applicants failing to appear for any examination, once having been scheduled, shall forfeit any examination fees paid. Effective January 1, 2005, the examination fees for the standard written and clinical vignette written examinations shall be based on the actual cost to the board of developing, purchasing, and grading of each examination, plus the actual cost to the board of administering each examination. The written examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(b) The fee for rescoring any written examination shall be twenty dollars ($20).

(c) The fee for issuance of the initial license shall be a maximum of one hundred fifty–five dollars ($155).

(d) With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

(Added by Stats.1985, c. 820, § 1.2. Amended by Stats.1987, c. 826, § 5; Stats.1988, c. 1090, § 4; Stats.1990, c. 547 (S.B.2222), § 3; Stats.1995, c. 839 (S.B.26), § 4.5; Stats.1996, c. 829 (A.B.3473), § 95; Stats.1998, c. 879 (S.B.2238), § 17; Stats.2004, c. 909 (S.B.136), § 16, eff. Sept. 30, 2004.)

§ 4996.4. Fee for reexamination

Notwithstanding Section 4996.3, an applicant who has failed any standard or clinical vignette written examination may apply for reexamination upon payment of the fee of up to one hundred fifty dollars ($ 150) including the examination fee and related administrative costs. An applicant who fails a standard or clinical vignette written examination may within one year from the notification date of failure, retake that examination as regularly scheduled, without further application, upon payment of the required examination fees. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all fees required. Applicants failing to appear for reexamination, once having been scheduled, shall forfeit any reexamination fees paid.

(Added by Stats.1985, c. 820, § 1.4. Amended by Stats.1987, c. 826, § 6; Stats.1990, c. 547 (S.B.2222), § 4; Stats.1995, c. 839 (S.B.26), § 5; Stats.1998, c. 879 (S.B.2238), § 18; Stats.2004, c. 909 (S.B.136), § 17, eff. Sept. 30, 2004.)

§ 4996.5. Scope, form and content of license

The board shall issue a license to each applicant meeting the requirements of this article, which license, so long as the annual renewal fees have been paid, licenses the holder to engage in the practice of clinical social work as defined in Section 4996.9, entitles the holder to use the title of licensed clinical social worker, and authorizes the holder to hold himself or herself out as qualified to perform any of the functions delineated by this chapter. The form and content of the license shall be determined by the director in accordance with Section 164.

(Added by Stats.1985, c. 820, § 1.)

§ 4996.6. Fees; renewal; delinquency; replacement registration, license, or certificate; certificate or letter of good standing

(a) The renewal fee for licenses that expire on or after January 1, 1996, shall be a maximum of one hundred fifty–five dollars ($155) and shall be collected on a biennial basis by the board in accordance with Section 152.6. The fees shall be deposited in the State Treasury to the credit of the Behavioral Sciences Fund.

(b) Licenses issued under this chapter shall expire no more than 24 months after the issue date. The expiration date of the original license shall be set by the board.

(c) To renew an unexpired license, the licensee shall, on or before the expiration date of the license, do the following:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a two–year renewal fee prescribed by the board.

(3) Certify compliance with the continuing education requirements set forth in Section 4996.22.

(4) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

(d) If the license is renewed after its expiration, the licensee shall, as a condition precedent to renewal, also pay a delinquency fee of seventy–five dollars ($75).

(e) Any person who permits his or her license to become delinquent may have it restored at any time within five years after its expiration upon the payment of all fees that he or she would have paid if the license had not become delinquent, plus the payment of all delinquency fees.

(f) A license that is not renewed within five years after its expiration may not be renewed, restored, reinstated, or reissued thereafter; however, the licensee may apply for and obtain a new license if:

(1) No fact, circumstance, or condition exists that, if the license were issued, would justify its revocation or suspension.

(2) He or she pays the fees that would be required if he or she were applying for a license for the first time.

(3) He or she takes and passes the current licensing examinations as specified in Section 4996.1.

(g) The fee for issuance of any replacement registration, license, or certificate shall be twenty dollars ($20).

(h) The fee for issuance of a certificate or letter of good standing shall be twenty–five dollars ($25).

(Added by Stats.1985, c. 820, § 1.6. Amended by Stats.1987, c. 826, § 7; Stats.1988, c. 1090, § 5; Stats.1990, c. 547 (S.B.2222), § 5; Stats.1995, c. 839 (S.B.26), § 6; Stats.1996, c. 829 (A.B.3473), § 96; Stats.1998, c. 879 (S.B.2238), § 19; Stats.2000, c. 836 (S.B.1554), § 48; Stats.2001, c. 159 (S.B.662), § 18; Stats.2003, c. 874 (S.B.363), § 14.)

§ 4996.65. Additional fees

In addition to the fees charged pursuant to Section 4996.6 for the biennial renewal of a license, the board shall collect an additional fee of ten dollars ($10) at the time of renewal. The board shall transfer this amount to the Controller who shall deposit the funds in the Mental Health Practitioner Education Fund.

(Added by Stats.2003, c. 437 (A.B.938), § 4.)

§ 4996.7. Display of license

A licensee shall display his or her license in a conspicuous place in the licensee's primary place of practice.

(Added by Stats.1985, c. 820, § 1. Amended by Stats.1998, c. 879 (S.B.2238), § 20.)

§ 4996.8. Display of current renewal receipt

The current renewal receipt shall be displayed near the license.

(Added by Stats.1985, c. 820, § 1. Amended by Stats.1999, c. 655 (S.B.1308), § 88.)

§ 4996.9. Clinical social work and psychotherapy defined

The practice of clinical social work is defined as a service in which a special knowledge of social resources, human capabilities, and the part that unconscious motivation plays in determining behavior, is directed at helping people to achieve more adequate, satisfying, and productive social adjustments. The application of social work principles and methods includes, but is not restricted to, counseling and using applied psychotherapy of a nonmedical nature with individuals, families, or groups; providing information and referral services; providing or arranging for the provision of social services; explaining or interpreting the psychosocial aspects in the situations of individuals, families, or groups; helping communities to organize, to provide, or to improve social or health services; or doing research related to social work.

Psychotherapy, within the meaning of this chapter, is the use of psychosocial methods within a professional relationship, to assist the person or persons to achieve a better psychosocial adaptation, to acquire greater human realization of psychosocial potential and adaptation, to modify internal and external conditions which affect individuals, groups, or communities in respect to behavior, emotions, and thinking, in respect to their intrapersonal and interpersonal processes.

(Added by Stats.1985, c. 820, § 1.)

§ 4996.10. Application of article only to clinical social workers

The provisions of this article shall be construed only as provisions relating to the examination and licensing of clinical social workers.

(Added by Stats.1985, c. 820, § 1.)

§ 4996.11. Suspension or revocation of license; grounds; conduct of proceedings

The board may suspend or revoke the license of any person who is guilty on the grounds set forth in Section 4992.3. The proceedings for the suspension or revocation of licenses under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted in that chapter.

(Added by Stats.1985, c. 820, § 1.)

§ 4996.12. Violations; penalties

Any person who violates this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding a period of six months, or by a fine not exceeding one thousand dollars ($1,000), or by both.

(Added by Stats.1985, c. 820, § 1.)

§ 4996.13. Other professional groups; work of psychosocial nature; impermissible representations

Nothing in this article shall prevent qualified members of other professional groups from doing work of a psychosocial nature consistent with the standards and ethics of their respective professions. However, they shall not hold themselves out to the public by any title or description of services incorporating the words psychosocial, or clinical social worker, or that they shall not state or imply that they are licensed to practice clinical social work. These qualified members of other professional groups include, but are not limited to, the following:

(a) A physician and surgeon certified pursuant to Chapter 5 (commencing with Section 2000).

(b) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900).

(c) Members of the State Bar of California.

(d) Marriage and family therapists licensed pursuant to Chapter 13 (commencing with Section 4980).

(e) A priest, rabbi, or minister of the gospel of any religious denomination.

(Added by Stats.1985, c. 820, § 1. Amended by Stats.2002, c. 1013 (S.B.2026), § 49.)

§ 4996.14. Employees of certain organizations; activities of psychosocial nature or use of official title of position

Nothing in this chapter shall restrict or prevent activities of a psychosocial nature or the use of the official title of the position for which they are employed on the part of the following persons, if those persons are performing those activities as part of the duties for which they are employed or solely within the confines or under the jurisdiction of the organization in which they are employed. However, they shall not offer to render clinical social work services, as defined in Section 4996.9, to the public for a fee, monetary or otherwise, over and above the salary they receive for the performance of their official duties with the organization in which they are employed.

(a) Persons employed by the United States Department of Health and Human Services.

(b) Persons employed in family or children services agencies.

(c) Individuals employed in proprietary or nonproprietary private psychiatric clinics.

(d) Individuals employed in accredited colleges, junior colleges, or universities.

(e) Individuals employed in federal, state, county or municipal governmental organizations, or nonprofit organizations which are engaged in research, education, and services which services are defined by a board composed of community representatives and professionals.

(f) Persons utilizing hypnotic techniques by referral from persons licensed to practice medicine, dentistry, or psychology, or persons utilizing hypnotic techniques which offer avocational or vocational

self–improvement and do not offer therapy for emotional or mental disorders.
(Added by Stats.1985, c. 820, § 1.)

§ 4996.15. Performance of psychosocial work by persons in academic institutions, government agencies or nonprofit organizations; social work intern

Nothing in this article shall restrict or prevent activities of a psychosocial nature on the part of persons employed by accredited academic institutions, public schools, government agencies, or nonprofit institutions engaged in the training of graduate students or social work interns pursuing the course of study leading to a master's degree in social work in an accredited college or university, or working in a recognized training program, provided that these activities and services constitute a part of a supervised course of study and that those persons are designated by such titles as social work interns, social work trainees, or other titles clearly indicating the training status appropriate to their level of training. The term "social work intern," however, shall be reserved for persons enrolled in a master's or doctoral training program in social work in an accredited school or department of social work.
(Added by Stats.1985, c. 820, § 1.)

§ 4996.16. Persons from out of state; application of chapter

Nothing in this chapter shall apply to any clinical social worker from outside this state, when in actual consultation with a licensed practitioner of this state, or when an invited guest of a professional association, or of an educational institution for the sole purpose of engaging in professional education through lectures, clinics, or demonstrations, if he or she is at the time of the consultation, lecture, or demonstration licensed to practice clinical social work in the state or country in which he or she resides. These clinical social workers shall not open an office or appoint a place to meet clients or receive calls from clients within the limits of this state.
(Added by Stats.1994, c. 26 (A.B.1807), § 187, eff. March 30, 1994.)

§ 4996.17. Experience gained outside California; use towards licensing requirements

(a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially the equivalent of the requirements of this chapter. The board may issue a license to any person who, at the time of application, has held a valid license, issued by a board of clinical social work examiners or corresponding authority of any state, for two years if the education and supervised experience requirements are substantially the equivalent of this chapter and the person successfully completes the board administered licensing examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon the person's completion of the following coursework and training:

(1) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(2) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(3) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(4)(A) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other requirements for licensure or in a separate course.

(B) On and after January 1, 2004, a minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(5) With respect to paragraphs (2), (3), and (4), the board may accept training or coursework acquired out of state.

(b) A person who qualifies for licensure based on experience gained outside California may apply for and receive an associate registration to practice clinical social work.
(Added by Stats.1994, c. 26 (A.B.1807), § 188, eff. March 30, 1994. Amended by Stats.2000, c. 836 (S.B.1554), § 49; Stats.2002, c. 481 (S.B.564), § 9; Stats.2003, c. 874 (S.B.363), § 15.)

§ 4996.18. Associate clinical social worker; registration; application; expiration and renewal; employment; notification of employment or termination; supervision; credit

(a) A person who wishes to be credited with experience toward licensure requirements shall register with the board as an associate clinical social worker prior to obtaining that experience. The application shall be made on a form prescribed by the board and shall be accompanied by a fee of seventy–five dollars ($75). An applicant for registration shall (1) possess a master's degree from an accredited school or department of social work, and (2) not have committed any crimes or acts constituting grounds for denial of licensure under Section 480. On and after January 1, 1993, an applicant who possesses a master's degree from a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education shall be eligible, and shall be required, to register as an associate clinical social worker in order to gain experience toward licensure if the applicant has not committed any crimes or acts that constitute grounds for denial of licensure under Section 480. That applicant shall not, however, be eligible for examination until the school or department of social work has received accreditation by the Commission on Accreditation of the Council on Social Work Education.

(b) Registration as an associate clinical social worker shall expire one year from the last day of the month during which it was issued. A registration may be renewed annually after initial registration by filing on or before the date on which the registration expires, an application for renewal, paying a renewal fee of seventy–five dollars ($75), and notifying the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, and whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the issuance of the initial registration or registrant's last renewal. Each person who registers or has registered as an associate clinical social worker, may retain that status for a total of six years.

(c) Notwithstanding the limitations on the length of an associate registration in subdivision (b), an associate may apply for, and the board shall grant, one–year extensions beyond the six–year period when no grounds exist for denial, suspension, or revocation of the registration pursuant to Section 480. An associate shall be eligible to receive a maximum of three one–year extensions. An associate who practices pursuant to an extension shall not practice independently and shall comply with all requirements of this chapter governing experience, including supervision, even if the associate has completed the hours of experience required for licensure. Each extension shall commence on the date when the last associate renewal or extension expires. An application for extension shall be made on a form prescribed by the board and shall be accompanied by a renewal fee of fifty dollars ($50). An associate who is granted this extension may work in all work settings authorized pursuant to this chapter.

(d) A registrant shall not provide clinical social work services to the public for a fee, monetary or otherwise, except as an employee.

(e) A registrant shall inform each client or patient prior to performing any professional services that he or she is unlicensed and is under the supervision of a licensed professional.

(f) Any experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Any experience obtained under the supervision of a supervisor with whom the applicant has a personal relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

(g) An applicant who possesses a master's degree from an accredited school or department of social work shall be able to apply experience the applicant obtained during the time the accredited school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education toward the licensure requirements, if the experience meets the requirements of Section 4996.20, 4996.21, or 4996.23. This subdivision shall apply retroactively to persons who possess a master's degree from an accredited school or department of social work and who obtained experience during the time the accredited school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education.

(h) An applicant for registration or licensure trained in an educational institution outside the United States shall demonstrate to the satisfaction of the board that he or she possesses a master's of social work degree that is equivalent to a master's degree issued from a school or department of social work that is accredited by the Commission on Accreditation of the Council on Social Work Education. These applicants shall provide the board with a comprehensive evaluation of the degree and shall provide any other documentation the board deems necessary. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements regardless of evaluation or accreditation.

(Added by Stats.1988, c. 1091, § 5. Amended by Stats.1992, c. 1308 (A.B.3718), § 2; Stats.1995, c. 839 (S.B.26), § 7; Stats.1998, c. 589 (S.B.1983), § 14; Stats.2000, c. 836 (S.B.1554), § 50; Stats.2001, c. 728 (S.B.724), § 46; Stats.2003, c. 607 (S.B.1077), § 20; Stats.2004, c. 695 (S.B.1913), § 46.)

§ 4996.19. Licensed clinical social workers' corporation; application of article

Nothing in this article shall prohibit the acts or practices of a licensed clinical social workers' corporation duly certificated pursuant to the Moscone–Knox Professional Corporation Act, as contained in Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code and Article 5 (commencing with Section 4998), when the corporation is in compliance with (a) the Moscone–Knox Professional Corporation Act; (b) Article 5 (commencing with Section 4998); and (c) all other statutes and all rules and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

(Formerly § 4996.18, added by Stats.1985, c. 820, § 1. Renumbered § 4996.19 and amended by Stats.1987, c. 826, § 8.)

§ 4996.20. Supervised post–master's experience; criteria for registrants prior to December 31, 1998

The experience required by subdivision (c) of Section 4996.2 shall meet the following criteria:

(a) An applicant shall have at least 3,200 hours of post–master's experience, supervised by a licensed clinical social worker, in providing clinical social work services consisting of psychosocial diagnosis; assessment; treatment, including psychotherapy and counseling; client–centered advocacy; consultation; and evaluation as permitted by Section 4996.9. For persons applying for licensure on or after January 1, 1992, this experience shall have been gained in not less than two nor more than six years and shall have been gained within the six years immediately preceding the date on which the application for licensure was filed.

(b) Notwithstanding the requirements of subdivision (a) that 3,200 hours of experience shall be gained under the supervision of a licensed clinical social worker, up to 1,000 hours of the required experience may be gained under the supervision of a licensed mental health professional acceptable to the board.

For purposes of this section, "supervision" means responsibility for and control of the quality of social work services being provided. Consultation shall not be considered to be supervision. Supervision shall include at least one hour of direct supervision for each week of experience claimed. Not less than one–half of the hours of required supervision shall be individual supervision. The remaining hours may be group supervision. "Individual supervision" means one supervisor meets with one supervisee at a time. "Group supervision" means a supervisor meets with a group of no more than eight supervisees at a time.

(c) For purposes of this section, a "private practice setting" is any setting other than a governmental entity, a school, college or university, a nonprofit and charitable corporation or a licensed health facility. Employment in a private practice setting shall not commence until the applicant has been registered as an associate clinical social worker. A registrant employed in a private practice setting shall not:

(1) Pay his or her employer for supervision, and shall receive fair remuneration from his or her employer.

(2) Receive any remuneration from patients or clients and shall only be paid by his or her employer.

(3) Perform services at any place except where the registrant's employer regularly conducts business.

(4) Have any proprietary interest in the employer's business.

(d) A person employed in a setting other than a private practice setting may obtain supervision from a person not employed by the registrant's employer if that person has signed a written contract with the employer to take supervisory responsibility for the registrant's social work services.

(e) This section shall apply only to persons who apply for registration on or before December 31, 1998.

(Added by Stats.1988, c. 1091, § 6. Amended by Stats.1991, c. 654 (A.B.1893), § 47.5; Stats.1998, c. 589 (S.B.1983), § 15; Stats.2004, c. 695 (S.B.1913), § 47.)

§ 4996.21. Associates; post–master's degree experience

The experience required by subdivision (c) of Section 4996.2 shall meet the following criteria:

(a) On or after January 1, 1999, an associate shall have at least 3,200 hours of post–master's degree experience in providing clinical social work services as permitted by Section 4996.9. At least 1,700 of these hours shall be gained under the supervision of a licensed clinical social worker. The remaining hours of the required experience may be gained under the supervision of a licensed mental health professional acceptable to the board as defined in a regulation adopted by the board. Experience shall consist of the following:

(1) A minimum of 2,000 hours in psychosocial diagnosis, assessment, and treatment, including psychotherapy or counseling.

(2) A maximum of 1,200 hours in client–centered advocacy, consultation, evaluation, and research.

(3) Experience shall have been gained in not less than two nor more than six years and shall have been gained within the six years immediately preceding the date on which the application for licensure was filed.

(b) Supervision means responsibility for and control of the quality of clinical social work services being provided.

(c) Consultation or peer discussion shall not be considered to be supervision.

(d) Supervision shall include at least one hour of direct supervisor contact for a minimum of 104 weeks and shall include at least one hour of direct supervisor contact for every 10 hours of client contact in each setting where experience is gained. Of the 104 weeks of required supervision, 52 weeks shall be individual supervision, and of the 52 weeks of required individual supervision, not less than 13 weeks shall be supervised by a licensed clinical social worker. For purposes of this section, "one hour of direct supervisor contact" means one hour of face–to–face contact on an individual basis or two hours of face–to–face contact in a group setting of not more than eight persons.

(e) The supervisor and the associate shall develop a supervisory plan that describes the goals and objectives of supervision. These goals shall include the ongoing assessment of strengths and limitations and the assurance of practice in accordance with the laws

and regulations. The associate shall submit to the board the initial original supervisory plan upon application for licensure.

(f)(1) Experience shall only be gained in a setting that meets both of the following:

(A) Lawfully and regularly provides clinical social work, mental health counseling, or psychotherapy.

(B) Provides oversight to ensure that the associate's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4996.9.

(2) Experience shall not be gained until the applicant has been registered as an associate clinical social worker.

(3) Employment in a private practice as defined in paragraph (4) shall not commence until the applicant has been registered as an associate clinical social worker.

(4) A private practice setting is a setting that is owned by a licensed clinical social worker, a licensed marriage and family therapist, a licensed psychologist, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(5) If volunteering, the associate shall provide the board with a letter from his or her employer verifying his or her voluntary status upon application for licensure.

(6) If employed, the associate shall provide the board with copies of his or her W–2 tax forms for each year of experience claimed upon application for licensure.

(g) While an associate may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration to associates.

(h) An associate shall not do the following:

(1) Receive any remuneration from patients or clients and shall only be paid by his or her employer.

(2) Have any proprietary interest in the employer's business.

(i) An associate, whether employed or volunteering, may obtain supervision from a person not employed by the associate's employer if that person has signed a written agreement with the employer to take supervisory responsibility for the associate's social work services.

(Added by Stats.1998, c. 589 (S.B.1983), § 16. Amended by Stats.1999, c. 657 (A.B.1677), § 15; Stats.2001, c. 728 (S.B.724), § 47; Stats.2003, c. 607 (S.B.1077), § 21.)

§ 4996.22. Continuing education requirements; hours; records; approved providers; subject matter; fees

(a)(1) Except as provided in subdivision (c), on and after January 1, 2000, the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of social work in the preceding two years, as determined by the board.

(2) For those persons renewing during 1999, the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 18 hours of approved continuing education in or relevant to the field of social work, as determined by the board. The coursework of continuing education described in this paragraph may be taken on or after the effective date of the continuing education regulations adopted by the board pursuant to the other provisions of this section.

(3) The board shall not renew any license of an applicant who began graduate study prior to January 1, 2004, pursuant to this chapter unless the applicant certifies to the board that during the applicant's first renewal period after the operative date of this section, he or she completed a continuing education course in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. On and after January 1, 2005, the course shall consist of not less than seven hours of training. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement. Continuing education courses taken pursuant to this paragraph shall be applied to the 36 hours of approved continuing education required under paragraph (1).

(b) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(c) The board may establish exceptions from the continuing education requirement of this section for good cause as defined by the board.

(d) The continuing education shall be obtained from one of the following sources:

(1) An accredited school of social work, as defined in Section 4990.4, or a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, including, but not limited to, a professional social work association, a licensed health facility, a governmental entity, a continuing education unit of an accredited four–year institution of higher learning, and a mental health professional association, approved by the board.

(3) The board shall establish, by regulation, a procedure for approving providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2), shall adhere to the procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

(e) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding, or the practice, of social work.

(2) Aspects of the social work discipline in which significant recent developments have occurred.

(3) Aspects of other related disciplines that enhance the understanding, or the practice, of social work.

(f) A system of continuing education for licensed clinical social workers shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(g) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

(h) The board may adopt regulations as necessary to implement this section.

(i) On and after January 1, 1997, the board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Science Examiners Fund. The fees related to the administration of this section shall be sufficient to meet but shall not exceed the costs of administering the corresponding provisions of this section. For purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (d), shall be deemed to be an approved provider.

(j) This section shall become operative on January 1, 2004.

(Added by Stats.2002, c. 481 (S.B.564), § 11, operative Jan. 1, 2004. Amended by Stats.2003, c. 607 (S.B.1077), § 22, operative Jan. 1, 2004.)

§ 4996.23. Post–master's degree experience; criteria

The experience required by subdivision (c) of Section 4996.2 shall meet the following criteria:

(a) All persons registered with the board on and after January 1, 2002, shall have at least 3,200 hours of post–master's degree supervised experience providing clinical social work services as permitted by Section 4996.9. At least 1,700 hours shall be gained under the supervision of a licensed clinical social worker. The remaining required supervised experience may be gained under the supervision of a licensed mental health professional acceptable to the board as defined by a regulation adopted by the board. This experience shall consist of the following:

(1) A minimum of 2,000 hours in clinical psychosocial diagnosis, assessment, and treatment, including psychotherapy or counseling.

(2) A maximum of 1,200 hours in client–centered advocacy, consultation, evaluation, and research.

(3) Of the 2,000 clinical hours required in paragraph (1), no less than 750 hours shall be face–to–face individual or group psychotherapy provided to clients in the context of clinical social work services.

(4) A minimum of two years of supervised experience is required to be obtained over a period of not less than 104 weeks and shall have been gained within the six years immediately preceding the date on which the application for licensure was filed.

(5) Experience shall not be credited for more than 40 hours in any week.

(b) "Supervision" means responsibility for, and control of, the quality of clinical social work services being provided. Consultation or peer discussion shall not be considered to be supervision.

(c)(1) Prior to the commencement of supervision, a supervisor shall comply with all requirements enumerated in Section 1870 of Title 16 of the California Code of Regulations and shall sign under penalty of perjury the "Responsibility Statement for Supervisors of an Associate Clinical Social Worker" form.

(2) Supervised experience shall include at least one hour of direct supervisor contact for a minimum of 104 weeks. In addition, an associate shall receive an average of at least one hour of direct supervisor contact for every week in which more than 10 hours of face–to–face psychotherapy is performed in each setting experience is gained. No more than five hours of supervision, whether individual or group, shall be credited during any single week. Of the 104 weeks of required supervision, 52 weeks shall be individual supervision, and of the 52 weeks of required individual supervision, not less than 13 weeks shall be supervised by a licensed clinical social worker. For purposes of this section, "one hour of direct supervisor contact" means one hour of face–to–face contact on an individual basis or two hours of face–to–face contact in a group of not more than eight persons receiving supervision.

(d) The supervisor and the associate shall develop a supervisory plan that describes the goals and objectives of supervision. These goals shall include the ongoing assessment of strengths and limitations and the assurance of practice in accordance with the laws and regulations. The associate shall submit to the board the initial original supervisory plan upon application for licensure.

(e) Experience shall only be gained in a setting that meets both of the following:

(1) Lawfully and regularly provides clinical social work, mental health counseling, or psychotherapy.

(2) Provides oversight to ensure that the associate's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4996.9.

(f) Experience shall not be gained until the applicant has been registered as an associate clinical social worker.

(g) Employment in a private practice as defined in subdivision (h) shall not commence until the applicant has been registered as an associate clinical social worker.

(h) A private practice setting is a setting that is owned by a licensed clinical social worker, a licensed marriage and family therapist, a licensed psychologist, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(i) If volunteering, the associate shall provide the board with a letter from his or her employer verifying his or her voluntary status upon application for licensure.

(j) If employed, the associate shall provide the board with copies of his or her W–2 tax forms for each year of experience claimed upon application for licensure.

(k) While an associate may be either a paid employee or volunteer, employers are encouraged to provide fair remuneration to associates.

(*l*) Associates shall not do the following:

(1) Receive any remuneration from patients or clients and shall only be paid by his or her employer.

(2) Have any proprietary interest in the employer's business.

(m) An associate, whether employed or volunteering, may obtain supervision from a person not employed by the associate's employer if that person has signed a written agreement with the employer to take supervisory responsibility for the associate's social work services.

(n) Notwithstanding any other provision of law, associates and applicants for examination shall receive a minimum of one hour of supervision per week for each setting in which he or she is working.
(Added by Stats.2001, c. 728 (S.B.724), § 48. Amended by Stats.2003, c. 607 (S.B.1077), § 23.)

§ 4996.25. Graduate study coursework in aging and long–term care; program contents; minimum contact hours

(a) Any applicant for licensure as a licensed clinical social worker who began graduate study on or after January 1, 2004, shall complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long–term care, which could include, but is not limited to, the biological, social, and psychological aspects of aging.

(b) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(c) In order to satisfy the coursework requirement of this section, the applicant shall submit to the board a certification from the chief academic officer of the educational institution from which the applicant graduated stating that the coursework required by this section is included within the institution's required curriculum for graduation, or within the coursework, that was completed by the applicant.

(d) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.
(Added by Stats.2002, c. 541 (S.B.953), § 8.)

§ 4996.26. Continuing education coursework in aging and long–term care; program contents; minimum number of hours

(a) A licensee who began graduate study prior to January 1, 2004, shall complete a three–hour continuing education course in aging and long–term care during his or her first renewal period after the operative date of this section, and shall submit to the board evidence acceptable to the board of the person's satisfactory completion of the course.

(b) The course shall include, but is not limited to, the biological, social, and psychological aspects of aging.

(c) Any person seeking to meet the requirements of subdivision (a) of this section may submit to the board a certificate evidencing completion of equivalent courses in aging and long–term care taken prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(d) The board may not renew an applicant's license until the applicant has met the requirements of this section.

(e) Continuing education courses taken pursuant to this section shall be applied to the 36 hours of approved continuing education required in Section 4996.22.

(f) This section shall become operative on January 1, 2005.

(Added by Stats.2002, c. 541 (S.B.953), § 9. Amended by Stats.2004, c. 695 (S.B.1913), § 48, operative Jan. 1, 2005.)

§ 4997. Inactive licenses

A licensed clinical social worker may apply to the board to request that his or her license be placed on inactive status. A licensee who holds an inactive license shall pay a biennial fee of half of the active renewal fee and shall be exempt from continuing education requirements specified in Section 4996.22, but shall otherwise be subject to this chapter and shall not engage in the practice of licensed clinical social work in this state. A licensee on inactive status who has not committed any acts or crimes constituting grounds for denial of licensure may, upon his or her request, have his or her license to practice licensed clinical social work placed on active status. A licensee requesting his or her license to be placed on active status between renewal cycles shall pay the remaining half of the renewal fee. A licensee requesting to reactivate from an inactive status whose license will expire less than one year from the date of the request shall be required to complete 18 hours of continuing education for license renewal. A licensee requesting to reactivate from an inactive status whose license will expire more than one year from the date of the request shall be required to complete 36 hours of continuing education for license renewal.

(Added by Stats.1998, c. 879 (S.B.2238), § 21. Amended by Stats.2003, c. 607 (S.B.1077), § 24.)

Article 5 LICENSED CLINICAL SOCIAL WORKERS CORPORATIONS

§ 4998. Definition

A licensed clinical social worker corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are licensed clinical social workers, physicians and surgeons, psychologists, marriage and family therapists, registered nurses, chiropractors, or acupuncturists are in compliance with the Moscone–Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs. With respect to a licensed clinical social worker corporation, the governmental agency referred to in the Moscone–Knox Professional Corporation Act is the Board of Behavioral Sciences.

(Added by Stats.1985, c. 820, § 1. Amended by Stats.1996, c. 829 (A.B.3473), § 97; Stats.1999, c. 657 (A.B.1677), § 16; Stats.2000, c. 135 (A.B.2539), § 5; Stats.2002, c. 1013 (S.B.2026), § 50.)

§ 4998.1. Unprofessional conduct

It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate, any provision or term of this article, the Moscone–Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), or any regulations duly adopted under those laws.

(Added by Stats.1999, c. 657 (A.B.1677), § 18.)

§ 4998.2. Name

Notwithstanding Section 4996, the name of a licensed clinical social worker corporation and any name or names under which it may be rendering professional services shall contain the words "licensed clinical social worker" and wording or abbreviations denoting corporate existence.

A licensed clinical social worker corporation that conducts business under a fictitious business name shall not use any name which is false, misleading, or deceptive, and shall inform the patient, prior to the commencement of treatment, that the business is conducted by a licensed clinical social worker corporation.

(Formerly § 4998.3, added by Stats.1985, c. 820, § 1. Renumbered § 4998.2 and amended by Stats.1999, c. 657 (A.B.1677), § 20; Stats.2000, c. 135 (A.B.2539), § 6.)

§ 4998.3. Directors, shareholders and officers; license

Except as provided in Section 13403 of the Corporations Code, each director, shareholder, and officer of a licensed clinical social worker corporation shall be a licensed person as defined in the Moscone–Knox Professional Corporation Act.

(Formerly § 4998.4, added by Stats.1985, c. 820, § 1. Amended by Stats.1990, c. 334 (A.B.2574), § 1. Renumbered § 4998.3 and amended by Stats.1999, c. 657 (A.B.1677), § 21.)

§ 4998.4. Income attributable to shareholder who is disqualified person

The income of a licensed clinical social worker corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined in the Moscone–Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), shall not in any manner accrue to the benefit of that shareholder or his or her shares in the licensed clinical social workers corporation.

(Formerly § 4998.5, added by Stats.1985, c. 820, § 1. Renumbered § 4998.4 and amended by Stats.1999, c. 657 (A.B.1677), § 22.)

§ 4998.5. Unprofessional conduct

A licensed clinical social worker corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule, or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by those statutes, rules, and regulations to the same extent as a person holding a license as a licensed clinical social worker.

(Formerly § 4998.6, added by Stats.1985, c. 820, § 1. Renumbered § 4998.5 and amended by Stats.1999, c. 657 (A.B.1677), § 23. Amended by Stats.2000, c. 135 (A.B.2539), § 7.)

§ 4998.6. Rules and regulations

The board may formulate and enforce rules and regulations to carry out the purposes and objectives of this article, including rules and regulations requiring (a) that the articles of incorporation or bylaws of a licensed clinical social worker corporation shall include a provision whereby the capital stock of that corporation owned by a disqualified person, as defined in the Moscone–Knox Professional Corporation Act, or a deceased person shall be sold to the corporation or to the remaining shareholders of that corporation within the time that the rules and regulations may provide, and (b) that a licensed clinical social worker corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

(Formerly § 4998.7. Renumbered § 4998.6 and amended by Stats.1999, c. 657 (A.B.1677), § 24. Amended by Stats.2000, c. 135 (A.B.2539), § 8.)

CIVIL CODE — PERSONS

CIVIL CODE

Division 1 PERSONS

Part 2 PERSONAL RIGHTS

§ 43. General personal rights

Besides the personal rights mentioned or recognized in the Government Code, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.

(Enacted 1872. Amended by Stats.1953, c. 604, p. 1849, § 1.)

§ 43.1. Unborn child deemed existing person

A child conceived, but not yet born, is deemed an existing person, so far as necessary for the child's interests in the event of the child's subsequent birth.

(Added by Stats.1992, c. 163 (A.B.2641), § 4, operative Jan. 1, 1994.)

§ 43.3. Breastfeeding; location

Notwithstanding any other provision of law, a mother may breastfeed her child in any location, public or private, except the private home or residence of another, where the mother and the child are otherwise authorized to be present.

(Added by Stats.1997, c. 59 (A.B.157), § 1.)

§ 43.4. Fraudulent promise to marry or cohabit not actionable

A fraudulent promise to marry or to cohabit after marriage does not give rise to a cause of action for damages.

(Added by Stats.1959, c. 381, p. 2306, § 1.)

§ 43.5. Wrongs not actionable

No cause of action arises for:

(a) Alienation of affection.

(b) Criminal conversation.

(c) Seduction of a person over the age of legal consent.

(d) Breach of promise of marriage.

(Added by Stats.1939, c. 128, p. 1245, § 2.)

§ 43.55. Arrest under warrant regular on face not actionable

(a) There shall be no liability on the part of, and no cause of action shall arise against, any peace officer who makes an arrest pursuant to a warrant of arrest regular upon its face if the peace officer in making the arrest acts without malice and in the reasonable belief that the person arrested is the one referred to in the warrant.

(b) As used in this section, a "warrant of arrest regular upon its face" includes both of the following:

(1) A paper arrest warrant that has been issued pursuant to a judicial order.

(2) A judicial order that is entered into an automated warrant system by law enforcement or court personnel authorized to make those entries at or near the time the judicial order is made.

(Formerly § 43.5(a), added by Stats.1945, c. 1117, p. 2126, § 1. Renumbered § 43.55 and amended by Stats.1986, c. 248, § 15. Amended by Stats.2005, c. 706 (A.B.1742), § 2.)

§ 43.56. Foster parents; alienation of child's affection

No cause of action arises against a foster parent for alienation of affection of a foster child.

(Formerly § 43.55, added by Stats.1986, c. 1330, § 2, eff. Sept. 29, 1986. Amended by Stats.1988, c. 195, § 1, eff. June 16, 1988. Renumbered § 43.56 and amended by Stats.1990, c. 216 (S.B.2510), § 5.)

§ 43.6. Immunity from liability; actions against parents on childbirth claims; defenses and damages in third party actions

(a) No cause of action arises against a parent of a child based upon the claim that the child should not have been conceived or, if conceived, should not have been allowed to have been born alive.

(b) The failure or refusal of a parent to prevent the live birth of his or her child shall not be a defense in any action against a third party, nor shall the failure or refusal be considered in awarding damages in any such action.

(c) As used in this section "conceived" means the fertilization of a human ovum by a human sperm.

(Added by Stats.1981, c. 331, § 1.)

§ 43.7. Immunity from liability; mental health professional quality assurance committees; professional societies, members or staff; peer review or insurance underwriting committees; hospital governing board

(a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any member of a duly appointed mental health professional quality assurance committee that is established in compliance with Section 4070 of the Welfare and Institutions Code, for any act or proceeding undertaken or performed within the scope of the functions of the committee which is formed to review and evaluate the adequacy, appropriateness, or effectiveness of the care and treatment planned for, or provided to, mental health patients in order to improve quality of care by mental health professionals if the committee member acts without malice, has made a reasonable effort to obtain the facts of the matter as to which he or she acts, and acts in reasonable belief that the action taken by him or her is warranted by the facts known to him or her after the reasonable effort to obtain facts.

(b) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society, any member of a duly appointed committee of a medical specialty society, or any member of a duly appointed committee of a state or local professional society, or duly appointed member of a committee of a professional staff of a licensed hospital (provided the professional staff operates pursuant to written bylaws that have been approved by the governing board of the hospital), for any act or proceeding undertaken or performed within the scope of the functions of the committee which is formed to maintain the professional standards of the society established by its bylaws, or any member of any peer review committee whose purpose is to review the quality of medical, dental, dietetic, chiropractic, optometric, acupuncture, or veterinary services rendered by physicians and surgeons, dentists, dental hygienists, podiatrists, registered dietitians, chiropractors, optometrists, acupuncturists, veterinarians, or psychologists which committee is composed chiefly of physicians and surgeons, dentists, dental hygienists, podiatrists, registered dietitians, chiropractors, optometrists, acupuncturists, veterinarians, or psychologists for any act or proceeding undertaken or performed in reviewing the quality of medical, dental, dietetic, chiropractic, optometric, acupuncture, or veterinary services rendered by physicians and surgeons, dentists, dental hygienists, podiatrists, registered dietitians, chiropractors, optometrists, acupuncturists, veterinarians, or psychologists or any member of the governing board of a hospital in reviewing the quality of medical services rendered by members of the staff if the professional society, committee, or board member acts without malice, has made a reasonable effort to obtain the facts of the matter as to which he, she, or it acts, and acts in reasonable belief that the

action taken by him, her, or it is warranted by the facts known to him, her, or it after the reasonable effort to obtain facts. "Professional society" includes legal, medical, psychological, dental, dental hygiene, dietetic, accounting, optometric, acupuncture, podiatric, pharmaceutic, chiropractic, physical therapist, veterinary, licensed marriage and family therapy, licensed clinical social work, and engineering organizations having as members at least 25 percent of the eligible persons or licentiates in the geographic area served by the particular society. However, if the society has less than 100 members, it shall have as members at least a majority of the eligible persons or licentiates in the geographic area served by the particular society.

"Medical specialty society" means an organization having as members at least 25 percent of the eligible physicians within a given professionally recognized medical specialty in the geographic area served by the particular society.

(c) This section does not affect the official immunity of an officer or employee of a public corporation.

(d) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any physician and surgeon, podiatrist, or chiropractor who is a member of an underwriting committee of an interindemnity or reciprocal or interinsurance exchange or mutual company for any act or proceeding undertaken or performed in evaluating physicians and surgeons, podiatrists, or chiropractors for the writing of professional liability insurance, or any act or proceeding undertaken or performed in evaluating physicians and surgeons for the writing of an interindemnity, reciprocal, or interinsurance contract as specified in Section 1280.7 of the Insurance Code, if the evaluating physician or surgeon, podiatrist, or chiropractor acts without malice, has made a reasonable effort to obtain the facts of the matter as to which he or she acts, and acts in reasonable belief that the action taken by him or her is warranted by the facts known to him or her after the reasonable effort to obtain the facts.

(e) This section shall not be construed to confer immunity from liability on any quality assurance committee established in compliance with Section 4070 of the Welfare and Institutions Code or hospital. In any case in which, but for the enactment of the preceding provisions of this section, a cause of action would arise against a quality assurance committee established in compliance with Section 4070 of the Welfare and Institutions Code or hospital, the cause of action shall exist as if the preceding provisions of this section had not been enacted.

(Added by Stats.1961, c. 623, p. 1780, § 1. Amended by Stats.1963, c. 806, p. 1836, § 1; Stats.1969, c. 264, p. 616, § 1; Stats.1973, c. 191, p. 493, § 1; Stats.1976, c. 532, p. 1287, § 1; Stats.1977, c. 241, p. 1085, § 1; Stats.1977, c. 934, p. 2858, § 1; Stats.1978, c. 268, p. 555, § 1; Stats.1978, c. 503, p. 1647, § 1; Stats.1980, c. 454, § 1, operative Jan. 1, 1990; Stats.1982, c. 234, p. 765, § 2, eff. June 2, 1982; Stats.1982, c. 705, p. 2862, § 1; Stats.1983, c. 289, § 1; Stats.1983, c. 297, § 1; Stats.1983, c. 1081, § 1.8; Stats.1984, c. 515, § 1; Stats.1984, c. 1012, § 1; Stats.1986, c. 669, § 2; Stats.1987, c. 1169, § 2, operative Jan. 1, 1990; Stats.1994, c. 815 (S.B.1279), § 1; Stats.2002, c. 1013 (S.B.2026), § 72.)

§ 43.8. Immunity from liability for communication on evaluation of practitioner of healing arts

In addition to the privilege afforded by Section 47, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of that person to any hospital, hospital medical staff, veterinary hospital staff, professional society, medical, dental, podiatric, or veterinary school, professional licensing board or division, committee or panel of a licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under Section 12529 of the Government Code, peer review committee, quality assurance committees established in compliance with Sections 4070 and 5624 of the Welfare and Institutions Code, or underwriting committee described in Section 43.7 when the communication is intended to aid in the evaluation of the qualifications, fitness, character, or insurability of a practitioner of the healing or veterinary arts. The immunities afforded by this section and by Section 43.7 shall not affect the availability of any absolute privilege which may be afforded by Section 47.

(Added by Stats.1974, c. 1086, p. 2313, § 1. Amended by Stats.1975, 2nd Ex.Sess., c. 1, p. 3968, § 24.4; Stats.1976, c. 532, p. 1287, § 2; Stats.1977, c. 934, p. 2859, § 2; Stats.1982, c. 234, p. 767, § 3, eff. June 2, 1982; Stats.1982, c. 705, p. 2863, § 2; Stats.1983, c. 1081, § 2; Stats.1984, c. 515, § 4; Stats.1983, c. 1081, § 2, operative Jan. 1, 1990; Stats.1990, c. 1597 (S.B.2375), § 30; Stats.2002, c. 664 (A.B.3034), § 31.)

§ 43.9. Immunity from liability; health care providers; unsolicited referrals from tests by multiphasic screening unit; notice

(a) There shall be no liability on the part of, and no cause of action shall accrue against, any health care provider for professional negligence on account of the receipt by such provider of an unsolicited referral, arising from a test performed by a multiphasic screening unit, for any act or omission, including the failure to examine, treat, or refer for examination or treatment any person concerning whom an unsolicited referral has been received. The immunity from liability granted by this subdivision shall only apply where a health provider meets the obligations established in subdivision (c).

(b) Every multiphasic screening unit shall notify each person it tests that the person should contact the health provider to whom the test results are sent within 10 days and that the health provider may not be obligated to interpret the results or provide further care. The multiphasic screening unit shall include the words "PATIENT TEST RESULTS" on the envelope of any test results sent to a health care provider, and shall include the address of the person tested in the test result material sent to the health care provider.

Nothing contained in this section shall relieve any health care provider from liability, if any, when at the time of receipt of the unsolicited referral there exists a provider–patient relationship, or a contract for health care services, or following receipt of such unsolicited referral there is established or reestablished a provider–patient relationship.

(c) A health care provider who receives unsolicited test results from a multiphasic screening unit shall receive immunity from liability pursuant to subdivision (a) only if the provider who receives such test results and does not wish to evaluate them, or evaluates them and takes no further action, either notifies the multiphasic screening unit of that fact or returns the test results within 21 days. If the health care provider reviews the test results and determines that they indicate a substantial risk of serious illness or death the provider shall make a reasonable effort to notify the person tested of the presumptive finding within 14 days after the provider has received the test results.

(d) For the purposes of this section:

(1) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code, and any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" also includes the legal representatives of a health care provider.

(2) "Professional negligence" means an action for personal injury or wrongful death proximately caused by a health care provider's negligent act or omission to act in the rendering of professional services, provided that such services are within the scope of services for which the health care provider is licensed and are not within any restriction imposed by the licensing agency or any licensed hospital.

(3) "Unsolicited referral" means any written report regarding the health, physical or mental condition of any person which was

forwarded or delivered to a health care provider without prior request by such provider.

(4) A "multiphasic screening unit" means a facility which does not prescribe or treat patients but performs diagnostic testing only.

(Added by Stats.1978, c. 1296, p. 4249, § 1. Amended by Stats.1980, c. 676, § 38.)

§ 43.91. Immunity from liability; members of professional society of persons licensed under the Real Estate Law; peer review committees

(a) There shall be no monetary liability on the part of, and no cause of action shall arise against, any member of a duly appointed committee of a professional society which comprises a substantial percentage of the persons licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code and situated in the geographic area served by the particular society, for any act or proceeding undertaken or performed within the scope of the functions of any such committee which is formed to maintain the professional standards of the society established by its bylaws, if such member acts without malice, has made a reasonable effort to obtain the facts of the matter as to which he acts, and acts in reasonable belief that the action taken by him is warranted by the facts known to him after such reasonable effort to obtain facts.

(b) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of such person to any committee specified in subdivision (a) when such communication is intended to aid in the evaluation of the qualifications, fitness or character of a member or applicant for membership in any such professional society, and does not represent as true any matter not reasonably believed to be true.

(c) The immunities afforded by this section shall not affect the availability of any absolute privilege which may be afforded by Section 47.

(d) This section shall not be construed to confer immunity from liability on any professional society. In any case in which, but for the enactment of this section, a cause of action would arise against a professional society, such cause of action shall exist as if this section had not been enacted.

(Added by Stats.1980, c. 492, § 1.)

§ 43.92. Psychotherapists; duty to warn of threatened violent behavior of patient; immunity from monetary liability

(a) There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is a psychotherapist as defined in Section 1010 of the Evidence Code in failing to warn of and protect from a patient's threatened violent behavior or failing to predict and warn of and protect from a patient's violent behavior except where the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.

(b) If there is a duty to warn and protect under the limited circumstances specified above, the duty shall be discharged by the psychotherapist making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.

(Added by Stats.1985, c. 737, § 1.)

§ 43.93. Psychotherapists; patient's cause of action for sexual contact; definitions

(a) For the purposes of this section the following definitions are applicable:

(1) "Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

(2) "Psychotherapist" means a physician and surgeon specializing in the practice of psychiatry, a psychologist, a psychological assistant, a marriage and family therapist, a registered marriage and family therapist intern or trainee, an educational psychologist, an associate clinical social worker, or a licensed clinical social worker.

(3) "Sexual contact" means the touching of an intimate part of another person. "Intimate part" and "touching" have the same meanings as defined in subdivisions (f) and (d), respectively, of Section 243.4 of the Penal Code. For the purposes of this section, sexual contact includes sexual intercourse, sodomy, and oral copulation.

(4) "Therapeutic relationship" exists during the time the patient or client is rendered professional service by the therapist.

(5) "Therapeutic deception" means a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the patient's or former patient's treatment.

(b) A cause of action against a psychotherapist for sexual contact exists for a patient or former patient for injury caused by sexual contact with the psychotherapist, if the sexual contact occurred under any of the following conditions:

(1) During the period the patient was receiving psychotherapy from the psychotherapist.

(2) Within two years following termination of therapy.

(3) By means of therapeutic deception.

(c) The patient or former patient may recover damages from a psychotherapist who is found liable for sexual contact. It is not a defense to the action that sexual contact with a patient occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions. No cause of action shall exist between spouses within a marriage.

(d) In an action for sexual contact, evidence of the plaintiff's sexual history is not subject to discovery and is not admissible as evidence except in either of the following situations:

(1) The plaintiff claims damage to sexual functioning.

(2) The defendant requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the history, and the court finds that the history is relevant and the probative value of the history outweighs its prejudicial effect.

The court shall allow the discovery or introduction as evidence only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is subject to discovery.

(Added by Stats.1987, c. 1474, § 1. Amended by Stats.1992, c. 890 (S.B.1394), § 5; Stats.1993, c. 589 (A.B.2211), § 19; Stats.2002, c. 1013 (S.B.2026), § 73.)

§ 43.95. Immunity of professional society for referral services or telephone information library; duty to disclose disciplinary actions

(a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society or any nonprofit corporation authorized by a professional society to operate a referral service, or their agents, employees, or members, for referring any member of the public to any professional member of the society or service, or for acts of negligence or conduct constituting unprofessional conduct committed by a professional to whom a member of the public was referred, so long as any of the foregoing persons or entities has acted without malice, and the referral was made at no cost added to the initial referral fee as part of a public service referral system organized under the auspices of the professional society. Further, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society for providing a telephone information library available for use by the general public without charge, nor against any nonprofit corporation authorized by a professional society for providing a telephone information library available for use by the general public without charge. "Professional society" includes legal, psychological, architectural, medical, dental, dietetic, accounting, optometric, podiatric, pharmaceutic, chiropractic, veterinary, licensed marriage

and family therapy, licensed clinical social work, and engineering organizations having as members at least 25 percent of the eligible persons or licentiates in the geographic area served by the particular society. However, if the society has less than 100 members, it shall have as members at least a majority of the eligible persons or licentiates in the geographic area served by the particular society. " Professional society" also includes organizations with referral services that have been authorized by the State Bar of California and operated in accordance with its Minimum Standards for a Lawyer Referral Service in California, and organizations that have been established to provide free assistance or representation to needy patients or clients.

(b) This section shall not apply whenever the professional society, while making a referral to a professional member of the society, fails to disclose the nature of any disciplinary action of which it has actual knowledge taken by a state licensing agency against that professional member. However, there shall be no duty to disclose a disciplinary action in either of the following cases:

(1) Where a disciplinary proceeding results in no disciplinary action being taken against the professional to whom a member of the public was referred.

(2) Where a period of three years has elapsed since the professional to whom a member of the public was referred has satisfied any terms, conditions, or sanctions imposed upon the professional as disciplinary action; except that if the professional is an attorney, there shall be no time limit on the duty to disclose.

(Added by Stats.1987, c. 727, § 4, operative July 1, 1993. Amended by Stats.1988, c. 312, § 2, operative July 1, 1993; Stats.2002, c. 1013 (S.B.2026), § 74.)

§ 43.96. Information to be provided to a complainant; immunity

(a) Any medical or podiatric society, health facility licensed or certified under Division 2 (commencing with Section 1200) of the Health and Safety Code, state agency as defined in Section 11000 of the Government Code, or local government agency that receives written complaints related to the professional competence or professional conduct of a physician and surgeon or doctor of podiatric medicine from the public shall inform the complainant that the Medical Board of California or the California Board of Podiatric Medicine, as the case may be, is the only authority in the state that may take disciplinary action against the license of the named licensee, and shall provide to the complainant the address and toll–free telephone number of the applicable state board.

(b) The immunity provided in Section 2318 of the Business and Professions Code and in Section 47 shall apply to complaints and information made or provided to a board pursuant to this section.

(Added by Stats.1993, c. 1267 (S.B.916), § 48. Amended by Stats.1994, c. 1206 (S.B.1775), § 26; Stats.1995, c. 708 (S.B.609), § 12.)

§ 43.97. Medical staff or membership privilege denial or restriction; immunity from liability; unreported or intentional injury exceptions

(a)[1] There shall be no monetary liability on the part of, and no cause of action for damages, other than economic or pecuniary damages, shall arise against a hospital for any action taken upon the recommendation of its medical staff, or against any other person or organization for any action taken, or restriction imposed, which is required to be reported pursuant to Section 805 of the Business and Professions Code, provided that the action or restriction is reported in accordance with Section 805 of the Business and Professions Code. This section shall not apply to an action knowingly and intentionally taken for the purpose of injuring a person affected by the action, or infringing upon a person's rights.

(Added by Stats.1981, c. 926, § 1. Amended by Stats.1986, c. 1274, § 5.)

[1]Enrolled bill did not contain a subd. (b).

§ 43.98. Communications to consultants to director of department of managed care; health care services; monetary liability

(a) There shall be no monetary liability on the part of, and no cause of action shall arise against, any consultant on account of any communication by that consultant to the Director of the Department of Managed Health Care or any other officer, employee, agent, contractor, or consultant of the Department of Managed Health Care, when that communication is for the purpose of determining whether health care services have been or are being arranged or provided in accordance with the Knox–Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and any regulation adopted thereunder and the consultant does all of the following:

(1) Acts without malice.

(2) Makes a reasonable effort to obtain the facts of the matter communicated.

(3) Acts with a reasonable belief that the communication is warranted by the facts actually known to the consultant after a reasonable effort to obtain the facts.

(4) Acts pursuant to a contract entered into on or after January 1, 1998, between the Commissioner of Corporations and a state licensing board or committee, including, but not limited to, the Medical Board of California, or pursuant to a contract entered into on or after January 1, 1998, with the Commissioner of Corporations pursuant to Section 1397.6 of the Health and Safety Code.

(5) Acts pursuant to a contract entered into on or after July 1, 2000, between the Director of the Department of Managed Health Care and a state licensing board or committee, including, but not limited to, the Medical Board of California, or pursuant to a contract entered into on or after July 1, 1999, with the Director of the Department of Managed Health Care pursuant to Section 1397.6 of the Health and Safety Code.

(b) The immunities afforded by this section shall not affect the availability of any other privilege or immunity which may be afforded under this part. Nothing in this section shall be construed to alter the laws regarding the confidentiality of medical records.

(Added by Stats.1997, c. 139 (A.B.564), § 1. Amended by Stats.1999, c. 525 (A.B.78), § 4; Stats.2000, c. 857 (A.B.2903), § 3.)

§ 43.99. Immunity from monetary liability; building and other inspectors; independent quality review of plans, specifications or work on residential buildings under the State Housing Law; exceptions

(a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person or other legal entity that is under contract with an applicant for a residential building permit to provide independent quality review of the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed pursuant to the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code), or any rules or regulations adopted pursuant to that law, or under contract with that applicant to provide independent quality review of the work of improvement to determine compliance with these plans and specifications, if the person or other legal entity meets the requirements of this section and one of the following applies:

(1) The person, or a person employed by any other legal entity, performing the work as described in this subdivision, has completed not less than five years of verifiable experience in the appropriate field and has obtained certification as a building inspector, combination inspector, or combination dwelling inspector from the International Conference of Building Officials (ICBO) and has successfully passed the technical written examination promulgated by ICBO for those certification categories.

(2) The person, or a person employed by any other legal entity, performing the work as described in this subdivision, has completed

not less than five years of verifiable experience in the appropriate field and is a registered professional engineer, licensed general contractor, or a licensed architect rendering independent quality review of the work of improvement or plan examination services within the scope of his or her registration or licensure.

(3) The immunity provided under this section does not apply to any action initiated by the applicant who retained the qualified person.

(4) A "qualified person" for purposes of this section means a person holding a valid certification as one of those inspectors.

(b) Except for qualified persons, this section shall not relieve from, excuse, or lessen in any manner, the responsibility or liability of any person, company, contractor, builder, developer, architect, engineer, designer, or other individual or entity who develops, improves, owns, operates, or manages any residential building for any damages to persons or property caused by construction or design defects. The fact that an inspection by a qualified person has taken place may not be introduced as evidence in a construction defect action, including any reports or other items generated by the qualified person. This subdivision shall not apply in any action initiated by the applicant who retained the qualified person.

(c) Nothing in this section, as it relates to construction inspectors or plans examiners, shall be construed to alter the requirements for licensure, or the jurisdiction, authority, or scope of practice, of architects pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, professional engineers pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or general contractors pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(d) Nothing in this section shall be construed to alter the immunity of employees of the Department of Housing and Community Development under the Tort Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) when acting pursuant to Section 17965 of the Health and Safety Code.

(e) The qualifying person shall engage in no other construction, design, planning, supervision, or activities of any kind on the work of improvement, nor provide quality review services for any other party on the work of improvement.

(f) The qualifying person, or other legal entity, shall maintain professional errors and omissions insurance coverage in an amount not less than two million dollars ($2,000,000).

(g) The immunity provided by subdivision (a) does not inure to the benefit of the qualified person for damages caused to the applicant solely by the negligence or willful misconduct of the qualified person resulting from the provision of services under the contract with the applicant.

(Added by Stats.2002, c. 722 (S.B.800), § 2.)

§ 44. Defamation

Defamation is effected by either of the following:

(a) Libel;

(b) Slander.

(Enacted 1872. Amended by Stats.1980, c. 676, § 39.)

§ 45. Libel

LIBEL, WHAT. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

(Enacted 1872.)

§ 45a. Libel on its face; other actionable defamatory language

A libel which is defamatory of the plaintiff without the necessity of explanatory matter, such as an inducement, innuendo or other extrinsic fact, is said to be a libel on its face. Defamatory language not libelous on its face is not actionable unless the plaintiff alleges and proves that he has suffered special damage as a proximate result thereof. Special damage is defined in Section 48a of this code.

(Added by Stats.1945, c. 1489, p. 2762, § 1.)

§ 46. Slander, false and unprivileged publications which constitute

Slander is a false and unprivileged publication, orally uttered, and also communications by radio or any mechanical or other means which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;

2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;

3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits;

4. Imputes to him impotence or a want of chastity; or

5. Which, by natural consequence, causes actual damage.

(Enacted 1872. Amended by Stats.1945, c. 1489, p. 2762, § 2.)

§ 47. Privileged publication or broadcast

Text of section operative until July 1, 2005.

A privileged publication or broadcast is one made:

(a) In the proper discharge of an official duty.

(b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except as follows:

(1) An allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution or legal separation made of or concerning a person by or against whom no affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to the person making the allegation or averment within the meaning of this section unless the pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable and probable cause for believing the truth of the allegation or averment and unless the allegation or averment is material and relevant to the issues in the action.

(2) This subdivision does not make privileged any communication made in furtherance of an act of intentional destruction or alteration of physical evidence undertaken for the purpose of depriving a party to litigation of the use of that evidence, whether or not the content of the communication is the subject of a subsequent publication or broadcast which is privileged pursuant to this section. As used in this paragraph, "physical evidence" means evidence specified in Section 250 of the Evidence Code or evidence that is property of any type specified in Section 2031 of the Code of Civil Procedure.

(3) This subdivision does not make privileged any communication made in a judicial proceeding knowingly concealing the existence of an insurance policy or policies.

(4) A recorded lis pendens is not a privileged publication unless it identifies an action previously filed with a court of competent jurisdiction which affects the title or right of possession of real property, as authorized or required by law.

(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This subdivision applies to and includes a communication concerning the job performance or qualifications of an applicant for employment, based upon credible evidence, made without malice, by a current or former employer of the applicant to, and upon request of, one whom the employer reasonably believes is a prospective employer of the

applicant. This subdivision authorizes a current or former employer, or the employer's agent, to answer whether or not the employer would rehire a current or former employee. This subdivision shall not apply to a communication concerning the speech or activities of an applicant for employment if the speech or activities are constitutionally protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure or any other provision of law.

(d)(1) By a fair and true report in, or a communication to, a public journal, of (A) a judicial, (B) legislative, or (C) other public official proceeding, or (D) of anything said in the course thereof, or (E) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.

(2) Nothing in paragraph (1) shall make privileged any communication to a public journal that does any of the following:

(A) Violates Rule 5–120 of the State Bar Rules of Professional Conduct.

(B) Breaches a court order.

(C) Violates any requirement of confidentiality imposed by law.

(e) By a fair and true report of (1) the proceedings of a public meeting, if the meeting was lawfully convened for a lawful purpose and open to the public, or (2) the publication of the matter complained of was for the public benefit.

(Enacted 1872. Amended by Code Am.1873–74, c. 612, p. 184, § 11; Stats.1895, c. 163, p. 167, § 1; Stats.1927, c. 866, p. 1881, § 1; Stats.1945, c. 1489, p. 2763, § 3; Stats.1979, c. 184, p. 403, § 1; Stats.1990, c. 1491 (A.B.3765), § 1; Stats.1991, c. 432 (A.B.529), § 1; Stats.1992, c. 615 (S.B.1804), § 1; Stats.1994, c. 364 (A.B.2778), § 1; Stats.1994, c. 700 (S.B.1457), § 2.5; Stats.1996, c. 1055 (S.B.1540), § 2; Stats.2002, c. 1029 (A.B.2868), § 1, eff. Sept. 28, 2002.)

For text of section operative July 1, 2005, see Civil Code § 47, post.

§ 47. Privileged publication or broadcast

Text of section operative July 1, 2005.

A privileged publication or broadcast is one made:

(a) In the proper discharge of an official duty.

(b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except as follows:

(1) An allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution or legal separation made of or concerning a person by or against whom no affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to the person making the allegation or averment within the meaning of this section unless the pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable and probable cause for believing the truth of the allegation or averment and unless the allegation or averment is material and relevant to the issues in the action.

(2) This subdivision does not make privileged any communication made in furtherance of an act of intentional destruction or alteration of physical evidence undertaken for the purpose of depriving a party to litigation of the use of that evidence, whether or not the content of the communication is the subject of a subsequent publication or broadcast which is privileged pursuant to this section. As used in this paragraph, "physical evidence" means evidence specified in Section 250 of the Evidence Code or evidence that is property of any type specified in Chapter 14 (commencing with Section 2031.010) of Title 4 of Part 4 of the Code of Civil Procedure.

(3) This subdivision does not make privileged any communication made in a judicial proceeding knowingly concealing the existence of an insurance policy or policies.

(4) A recorded lis pendens is not a privileged publication unless it identifies an action previously filed with a court of competent jurisdiction which affects the title or right of possession of real property, as authorized or required by law.

(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This subdivision applies to and includes a communication concerning the job performance or qualifications of an applicant for employment, based upon credible evidence, made without malice, by a current or former employer of the applicant to, and upon request of, one whom the employer reasonably believes is a prospective employer of the applicant. This subdivision authorizes a current or former employer, or the employer's agent, to answer whether or not the employer would rehire a current or former employee. This subdivision shall not apply to a communication concerning the speech or activities of an applicant for employment if the speech or activities are constitutionally protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure or any other provision of law.

(d)(1) By a fair and true report in, or a communication to, a public journal, of (A) a judicial, (B) legislative, or (C) other public official proceeding, or (D) of anything said in the course thereof, or (E) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.

(2) Nothing in paragraph (1) shall make privileged any communication to a public journal that does any of the following:

(A) Violates Rule 5–120 of the State Bar Rules of Professional Conduct.

(B) Breaches a court order.

(C) Violates any requirement of confidentiality imposed by law.

(e) By a fair and true report of (1) the proceedings of a public meeting, if the meeting was lawfully convened for a lawful purpose and open to the public, or (2) the publication of the matter complained of was for the public benefit.

(Enacted 1872. Amended by Code Am.1873–74, c. 612, p. 184, § 11; Stats.1895, c. 163, p. 167, § 1; Stats.1927, c. 866, p. 1881, § 1; Stats.1945, c. 1489, p. 2763, § 3; Stats.1979, c. 184, p. 403, § 1; Stats.1990, c. 1491 (A.B.3765), § 1; Stats.1991, c. 432 (A.B.529), § 1; Stats.1992, c. 615 (S.B.1804), § 1; Stats.1994, c. 364 (A.B.2778), § 1; Stats.1994, c. 700 (S.B.1457), § 2.5; Stats.1996, c. 1055 (S.B.1540), § 2; Stats.2002, c. 1029 (A.B.2868), § 1, eff. Sept. 28, 2002; Stats.2004, c. 182 (A.B.3081), § 4, operative July 1, 2005.)

For text of section operative until July 1, 2005, see Civil Code § 47, ante.

§ 47.5. Peace officers; defamation action against person filing false complaint alleging misconduct, criminal conduct, or incompetence

Notwithstanding Section 47, a peace officer may bring an action for defamation against an individual who has filed a complaint with that officer's employing agency alleging misconduct, criminal conduct, or incompetence, if that complaint is false, the complaint was made with knowledge that it was false and that it was made with spite, hatred, or ill will. Knowledge that the complaint was false may be proved by a showing that the complainant had no reasonable grounds to believe the statement was true and that the complainant exhibited a reckless disregard for ascertaining the truth.

(Added by Stats.1982, c. 1588, p. 6272, § 1.)

§ 48. Privileged publication or broadcast; malice not inferred

In the case provided for in subdivision (c) of Section 47, malice is not inferred from the communication.

(Enacted 1872. Amended by Stats.1895, c. 163, p. 168, § 2; Stats.1945, c. 1489, p. 2763, § 4; Stats.2003, c. 62 (S.B.600), § 11.)

§ 48a. Libel in newspaper; slander by radio broadcast

1. **Special damages; notice and demand for correction.** In any action for damages for the publication of a libel in a newspaper, or of a slander by radio broadcast, plaintiff shall recover no more than special damages unless a correction be demanded and be not published or broadcast, as hereinafter provided. Plaintiff shall serve

upon the publisher, at the place of publication or broadcaster at the place of broadcast, a written notice specifying the statements claimed to be libelous and demanding that the same be corrected. Said notice and demand must be served within 20 days after knowledge of the publication or broadcast of the statements claimed to be libelous.

2. **General, special and exemplary damages.** If a correction be demanded within said period and be not published or broadcast in substantially as conspicuous a manner in said newspaper or on said broadcasting station as were the statements claimed to be libelous, in a regular issue thereof published or broadcast within three weeks after such service, plaintiff, if he pleads and proves such notice, demand and failure to correct, and if his cause of action be maintained, may recover general, special and exemplary damages; provided that no exemplary damages may be recovered unless the plaintiff shall prove that defendant made the publication or broadcast with actual malice and then only in the discretion of the court or jury, and actual malice shall not be inferred or presumed from the publication or broadcast.

3. **Correction prior to demand.** A correction published or broadcast in substantially as conspicuous a manner in said newspaper or on said broadcasting station as the statements claimed in the complaint to be libelous, prior to receipt of a demand therefor, shall be of the same force and effect as though such correction had been published or broadcast within three weeks after a demand therefor.

4. **Definitions.** As used herein, the terms "general damages," "special damages," "exemplary damages" and "actual malice," are defined as follows:

(a) "General damages" are damages for loss of reputation, shame, mortification and hurt feelings;

(b) "Special damages" are all damages which plaintiff alleges and proves that he has suffered in respect to his property, business, trade, profession or occupation, including such amounts of money as the plaintiff alleges and proves he has expended as a result of the alleged libel, and no other;

(c) "Exemplary damages" are damages which may in the discretion of the court or jury be recovered in addition to general and special damages for the sake of example and by way of punishing a defendant who has made the publication or broadcast with actual malice;

(d) "Actual malice" is that state of mind arising from hatred or ill will toward the plaintiff; provided, however, that such a state of mind occasioned by a good faith belief on the part of the defendant in the truth of the libelous publication or broadcast at the time it is published or broadcast shall not constitute actual malice.

(Added by Stats.1931, c. 1018, p. 2034, § 1. Amended by Stats.1945, c. 1489, p. 2763, § 5.)

§ 48.5. Defamation by radio; non–liability of owner, licensee or operator of broadcasting station or network

(1) The owner, licensee or operator of a visual or sound radio broadcasting station or network of stations, and the agents or employees of any such owner, licensee or operator, shall not be liable for any damages for any defamatory statement or matter published or uttered in or as a part of a visual or sound radio broadcast by one other than such owner, licensee or operator, or agent or employee thereof, if it shall be alleged and proved by such owner, licensee or operator, or agent or employee thereof, that such owner, licensee or operator, or such agent or employee, has exercised due care to prevent the publication or utterance of such statement or matter in such broadcast.

(2) If any defamatory statement or matter is published or uttered in or as a part of a broadcast over the facilities of a network of visual or sound radio broadcasting stations, the owner, licensee or operator of any such station, or network of stations, and the agents or employees thereof, other than the owner, licensee or operator of the station, or network of stations, originating such broadcast, and the agents or employees thereof, shall in no event be liable for any damages for any such defamatory statement or matter.

(3) In no event, however, shall any owner, licensee or operator of such station or network of stations, or the agents or employees thereof, be liable for any damages for any defamatory statement or matter published or uttered, by one other than such owner, licensee or operator, or agent or employee thereof, in or as a part of a visual or sound radio broadcast by or on behalf of any candidate for public office, which broadcast cannot be censored by reason of the provisions of federal statute or regulation of the Federal Communications Commission.

(4) As used in this Part 2, the terms "radio," "radio broadcast," and "broadcast," are defined to include both visual and sound radio broadcasting.

(5) Nothing in this section contained shall deprive any such owner, licensee or operator, or the agent or employee thereof, of any rights under any other section of this Part 2.

(Added by Stats.1949, c. 1258, p. 2213, § 1.)

§ 48.7. Child abuse; prohibition against libel or slander action while charges pending; tolling of limitations; pleadings; demurrer; attorney fees and costs

(a) No person charged by indictment, information, or other accusatory pleading of child abuse may bring a civil libel or slander action against the minor, the parent or guardian of the minor, or any witness, based upon any statements made by the minor, parent or guardian, or witness which are reasonably believed to be in furtherance of the prosecution of the criminal charges while the charges are pending before a trial court. The charges are not pending within the meaning of this section after dismissal, after pronouncement of judgment, or during an appeal from a judgment.

Any applicable statute of limitations shall be tolled during the period that such charges are pending before a trial court.

(b) Whenever any complaint for libel or slander is filed which is subject to the provisions of this section, no responsive pleading shall be required to be filed until 30 days after the end of the period set forth in subdivision (a).

(c) Every complaint for libel or slander based on a statement that the plaintiff committed an act of child abuse shall state that the complaint is not barred by subdivision (a). A failure to include that statement shall be grounds for a demurrer.

(d) Whenever a demurrer against a complaint for libel or slander is sustained on the basis that the complaint was filed in violation of this section, attorney's fees and costs shall be awarded to the prevailing party.

(e) Whenever a prosecutor is informed by a minor, parent, guardian, or witness that a complaint against one of those persons has been filed which may be subject to the provisions of this section, the prosecutor shall provide that person with a copy of this section.

(f) As used in this section, child abuse has the meaning set forth in Section 11165 of the Penal Code.

(Added by Stats.1981, c. 253, § 1.)

§ 48.8. Communications to school personnel regarding threats to commit violence on the school grounds involving deadly or dangerous weapons; liability for defamation

(a) A communication by any person to a school principal, or a communication by a student attending the school to the student's teacher or to a school counselor or school nurse and any report of that communication to the school principal, stating that a specific student or other specified person has made a threat to commit violence or potential violence on the school grounds involving the use of a firearm or other deadly or dangerous weapon, is a communication on a matter of public concern and is subject to liability in defamation only upon a showing by clear and convincing evidence that the communication or report was made with knowledge of its falsity or with reckless disregard for the truth or falsity of the communication. Where punitive damages are alleged, the provisions of Section 3294 shall also apply.

(b) As used in this section, "school" means a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive.
(Added by Stats.2001, c. 570 (A.B.1717), § 1.)

§ 48.9. Anonymous witness program; immunity

(a) An organization which sponsors or conducts an anonymous witness program, and its employees and agents, shall not be liable in a civil action for damages resulting from its receipt of information regarding possible criminal activity or from dissemination of that information to a law enforcement agency.

(b) The immunity provided by this section shall apply to any civil action for damages, including, but not limited to, a defamation action or an action for damages resulting from retaliation against a person who provided information.

(c) The immunity provided by this section shall not apply in any of the following instances:

(1) The information was disseminated with actual knowledge that it was false.

(2) The name of the provider of the information was disseminated without that person's authorization and the dissemination was not required by law.

(3) The name of the provider of information was obtained and the provider was not informed by the organization that the disclosure of his or her name may be required by law.

(d) As used in this section, an "anonymous witness program" means a program whereby information relating to alleged criminal activity is received from persons, whose names are not released without their authorization unless required by law, and disseminated to law enforcement agencies.
(Added by Stats.1983, c. 495, § 1.)

§ 49. Personal relations, acts forbidden by

The rights of personal relations forbid:

(a) The abduction or enticement of a child from a parent, or from a guardian entitled to its custody;

(b) The seduction of a person under the age of legal consent;

(c) Any injury to a servant which affects his ability to serve his master, other than seduction, abduction or criminal conversation.
(Enacted 1872. Amended by Stats.1905, c. 70, p. 68, § 1; Stats.1939, c. 128, p. 1245, § 1; Stats.1939, c. 1103, p. 3037, § 5.)

§ 50. Force, right to use

Any necessary force may be used to protect from wrongful injury the person or property of oneself, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest.
(Enacted 1872. Amended by Code Am.1873–74, c. 612, p. 184, § 12.)

§ 51. Unruh Civil Rights Act; equal rights; business establishments; violation

(a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, * * * medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

(c) This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, disability, * * * medical condition, marital status, or sexual orientation.

(d) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(e) For purposes of this section:

(1) "Disability" means any mental or physical disability as defined in Sections 12926 and 12926.1 of the Government Code.

(2) "Medical condition" has the same meaning as defined in subdivision (h) of Section 12926 of the Government Code.

(3) "Religion" includes all aspects of religious belief, observance, and practice.

(4) "Sex" has the same meaning as defined in subdivision (p) of Section 12926 of the Government Code.

(5) "Sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation" includes a perception that the person has any particular characteristic or characteristics within the listed categories or that the person is associated with a person who has, or is perceived to have, any particular characteristic or characteristics within the listed categories.

(6) "Sexual orientation" has the same meaning as defined in subdivision (q) of Section 12926 of the Government Code.

(f) A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101–336) shall also constitute a violation of this section.
(Added by Stats.1905, c. 413, p. 553, § 1. Amended by Stats.1919, c. 210, p. 309, § 1; Stats.1923, c. 235, p. 485, § 1; Stats.1959, c. 1866, p. 4424, § 1; Stats.1961, c. 1187, p. 2920, § 1; Stats.1974, c. 1193, p. 2568, § 1; Stats.1987, c. 159, § 1; Stats.1992, c. 913 (A.B.1077), § 3; Stats.1998, c. 195 (A.B.2702), § 1; Stats.2000, c. 1049 (A.B.2222), § 2; Stats.2005, c. 420 (A.B.1400), § 3.)

§ 51.1. Mandatory service on State Solicitor General of each party's brief or petition and brief in causes of action based on violation of civil rights statutes

If a violation of Section 51, 51.5, 51.7, 51.9, or 52.1 is alleged or the application or construction of any of these sections is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, each party shall serve a copy of the party's brief or petition and brief, on the State Solicitor General at the Office of the Attorney General. No brief may be accepted for filing unless the proof of service shows service on the State Solicitor General. Any party failing to comply with this requirement shall be given a reasonable opportunity to cure the failure before the court imposes any sanction and, in that instance, the court shall allow the Attorney General reasonable additional time to file a brief in the matter.
(Added by Stats.2002, c. 244 (A.B.2524), § 1.)

§ 51.2. Age discrimination in housing prohibited; exception; intent

(a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. Where accommodations are designed to meet the physical and social needs of senior citizens, a business establishment may establish and preserve that housing for senior citizens, pursuant to Section 51.3, except housing as to which Section 51.3 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100–430) and implementing regulations against discrimination on the basis of familial status. For accommodations constructed before February 8, 1982, that meet all the criteria for senior citizen housing specified in Section 51.3, a business establishment may establish and preserve that housing development for senior citizens without the housing development being designed to meet physical and social needs of senior citizens.

(b) This section is intended to clarify the holdings in Marina Point, Ltd. v. Wolfson (1982) 30 Cal. 3d 72 and O'Connor v. Village Green Owners Association (1983) 33 Cal. 3d 790.

(c) This section shall not apply to the County of Riverside.

(d) A housing development for senior citizens constructed on or after January 1, 2001, shall be presumed to be designed to meet the physical and social needs of senior citizens if it includes all of the following elements:

(1) Entryways, walkways, and hallways in the common areas of the development, and doorways and paths of access to and within the housing units, shall be as wide as required by current laws applicable to new multifamily housing construction for provision of access to persons using a standard–width wheelchair.

(2) Walkways and hallways in the common areas of the development shall be equipped with standard height railings or grab bars to assist persons who have difficulty with walking.

(3) Walkways and hallways in the common areas shall have lighting conditions which are of sufficient brightness to assist persons who have difficulty seeing.

(4) Access to all common areas and housing units within the development shall be provided without use of stairs, either by means of an elevator or sloped walking ramps.

(5) The development shall be designed to encourage social contact by providing at least one common room and at least some common open space.

(6) Refuse collection shall be provided in a manner that requires a minimum of physical exertion by residents.

(7) The development shall comply with all other applicable requirements for access and design imposed by law, including, but not limited to, the Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.), and the regulations promulgated at Title 24 of the California Code of Regulations that relate to access for persons with disabilities or handicaps. Nothing in this section shall be construed to limit or reduce any right or obligation applicable under those laws.

(Added by Stats.1984, c. 787, § 1. Amended by Stats.1989, c. 501, § 1; Stats.1993, c. 830 (S.B.137), § 1, eff. Oct. 6, 1993; Stats.1996, c. 1147 (S.B.2097), § 2; Stats.1999, c. 324 (S.B.382), § 1; Stats.2000, c. 1004 (S.B.2011), § 2; Stats.2002, c. 726 (A.B.2787), § 2.)

§ 51.3. Housing; age limitations; necessity for senior citizen housing

(a) The Legislature finds and declares that this section is essential to establish and preserve specially designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) "Qualified permanent resident" means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) "Qualified permanent resident" also means a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, "disabled" means a person who has a disability as defined in subdivision (b) of Section 54. A "disabling injury or illness" means an illness or injury which results in a condition meeting the definition of disability set forth in subdivision (b) of Section 54.

(A) For any person who is a qualified permanent resident under this paragraph whose disabling condition ends, the owner, board of directors, or other governing body may require the formerly disabled resident to cease residing in the development upon receipt of six months' written notice; provided, however, that the owner, board of directors, or other governing body may allow the person to remain a resident for up to one year after the disabling condition ends.

(B) The owner, board of directors, or other governing body of the senior citizen housing development may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under this paragraph if the owner, board of directors, or other governing body finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that the action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the coresident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in the hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the owner, board of directors, or other governing body in order to preserve the privacy of the affected persons.

The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

(4) "Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units. Any senior citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code. No housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed or put to use for occupancy by senior citizens.

(5) "Dwelling unit" or "housing" means any residential accommodation other than a mobilehome.

(6) "Cohabitant" refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the Family Code.

(7) "Permitted health care resident" means a person hired to provide live–in, long–term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care. For the purposes of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the senior citizen from the dwelling unit only if both of the following are applicable:

(A) The senior citizen became absent from the dwelling due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.

(B) The absent senior citizen or an authorized person acting for the senior citizen submits a written request to the owner, board of directors, or governing board stating that the senior citizen desires that

the permitted health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the development.

Upon written request by the senior citizen or an authorized person acting for the senior citizen, the owner, board of directors, or governing board shall have the discretion to allow a permitted health care resident to remain for a time period longer than 90 days from the date that the senior citizen's absence began, if it appears that the senior citizen will return within a period of time not to exceed an additional 90 days.

(c) The covenants, conditions, and restrictions and other documents or written policy shall set forth the limitations on occupancy, residency, or use on the basis of age. Any such limitation shall not be more exclusive than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted under subdivision (h) of this section or under subdivision (b) of Section 51.4. That limitation may be less exclusive, but shall at least require that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as his or her primary residence on a permanent basis. The application of the rules set forth in this subdivision regarding limitations on occupancy may result in less than all of the dwellings being actually occupied by a senior citizen.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not less than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(f) The condominium, stock cooperative, limited–equity housing cooperative, planned development, or multiple–family residential rental property shall have been developed for, and initially been put to use as, housing for senior citizens, or shall have been substantially rehabilitated or renovated for, and immediately afterward put to use as, housing for senior citizens, as provided in this section; provided, however, that no housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed for or originally put to use for occupancy by senior citizens.

(g) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited–equity housing cooperative, planned development, or multiple–family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(h) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live–in, long–term, or hospice health care to a qualifying resident for compensation. For purposes of this subdivision, the term "for compensation" shall include provisions of lodging and food in exchange for care.

(j) Notwithstanding any other provision of this section, this section shall not apply to the County of Riverside.

(Added by Stats.1984, c. 1333, § 1. Amended by Stats.1985, c. 1505, § 2; Stats.1989, c. 190, § 1; Stats.1994, c. 464 (S.B.1560), § 1; Stats.1995, c. 147 (S.B.332), § 1; Stats.1996, c. 1147 (S.B.2097), § 3; Stats.1999, c. 324 (S.B.382), § 2; Stats.2000, c. 1004 (S.B.2011), § 3.)

§ 51.4. Exemption from special design requirement

(a) The Legislature finds and declares that the requirements for senior housing under Sections 51.2 and 51.3 are more stringent than the requirements for that housing under the federal Fair Housing Amendments Act of 1988 (Public Law 100–430)[1] in recognition of the acute shortage of housing for families with children in California. The Legislature further finds and declares that the special design requirements for senior housing under Sections 51.2 and 51.3 may pose a hardship to some housing developments which were constructed before the decision in Marina Point Ltd. v. Wolfson (1982), 30 Cal. 3d 72.[2] The Legislature further finds and declares that the requirement for specially designed accommodations in senior housing under Sections 51.2 and 51.3 provides important benefits to senior citizens and also ensures that housing exempt from the prohibition of age discrimination is carefully tailored to meet the compelling societal interest in providing senior housing.

(b) Any person who resided in, occupied, or used, prior to January 1, 1990, a dwelling in a senior citizen housing development which relied on the exemption to the special design requirement provided by this section prior to January 1, 2001, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the changes made to this section by the enactment of Senate Bill 1382[3] or Senate Bill 2011[4] at the 1999–2000 Regular Session of the Legislature.

(c) This section shall not apply to the County of Riverside.

(Added by Stats.1989, c. 501, § 2. Amended by Stats.1991, c. 59 (A.B.125), § 1, eff. June 17, 1991; Stats.1996, c. 1147 (S.B.2097), § 4; Stats.2000, c. 1004 (S.B.2011), § 4.)

[1]See Short Title note under 42 U.S.C.A. § 3601 for classification of the Act to the Code.

[2]So in enrolled bill. See 30 Cal.3d 721, 640 P.2d 115, 180 Cal.Rptr. 496.

[3]S.B.1382 was vetoed in 2000.

[4]Stats.2000, c. 1004.

§ 51.5. Discrimination, boycott, blacklist, etc.; business establishments; equal rights

(a) No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state * * * on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51, or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers, because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has, or is perceived to have, any of those characteristics.

(b) As used in this section, "person" includes any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company.

(c) This section shall not be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

* * *

(Added by Stats.1976, c. 366, p. 1013, § 1. Amended by Stats.1987, c. 159, § 2; Stats.1992, c. 913 (A.B.1077), § 3.2; Stats.1994, c. 1010 (S.B.2053), § 28; Stats.1998, c. 195 (A.B.2702), § 2; Stats.1999, c.

591 (A.B.1670), § 2; Stats.2000, c. 1049 (A.B.2222), § 3; Stats.2005, c. 420 (A.B.1400), § 4.)

§ 51.6. Gender Tax Repeal Act of 1995

(a) This section shall be known, and may be cited, as the Gender Tax Repeal Act of 1995.

(b) No business establishment of any kind whatsoever may discriminate, with respect to the price charged for services of similar or like kind, against a person because of the person's gender.

(c) Nothing in subdivision (b) prohibits price differences based specifically upon the amount of time, difficulty, or cost of providing the services.

(d) Except as provided in subdivision (f), the remedies for a violation of this section are the remedies provided in subdivision (a) of Section 52. However, an action under this section is independent of any other remedy or procedure that may be available to an aggrieved party.

(e) This act does not alter or affect the provisions of the Health and Safety Code, the Insurance Code, or other laws that govern health care service plan or insurer underwriting or rating practices.

(f)(1) The following business establishments shall clearly and conspicuously disclose to the customer in writing the pricing for each standard service provided:

(A) Tailors or businesses providing aftermarket clothing alterations.

(B) Barbers or hair salons.

(C) Dry cleaners and laundries providing services to individuals.

(2) The price list shall be posted in an area conspicuous to customers. Posted price lists shall be in no less than 14–point boldface type and clearly and completely display pricing for every standard service offered by the business under paragraph (1).

(3) The business establishment shall provide the customer with a complete written price list upon request.

(4) The business establishment shall display in a conspicuous place at least one clearly visible sign, printed in no less than 24–point boldface type, which reads: "CALIFORNIA LAW PROHIBITS ANY BUSINESS ESTABLISHMENT FROM DISCRIMINATING, WITH RESPECT TO THE PRICE CHARGED FOR SERVICES OF SIMILAR OR LIKE KIND, AGAINST A PERSON BECAUSE OF THE PERSON'S GENDER. A COMPLETE PRICE LIST IS AVAILABLE UPON REQUEST."

(5) A business establishment that fails to correct a violation of this subdivision within 30 days of receiving written notice of the violation is liable for a civil penalty of one thousand dollars ($1,000).

(6) For the purposes of this subdivision, "standard service" means the 15 most frequently requested services provided by the business.

(Added by Stats.1995, c. 866 (A.B.1100), § 1. Amended by Stats.2001, c. 312 (A.B.1088), § 1.)

§ 51.7. Freedom from violence or intimidation

(a) All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of * * * political affiliation, * * * <u>or on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51,</u> or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. The identification in this subdivision of particular bases of discrimination is illustrative rather than restrictive.

<u>(b)</u> This section does not apply to statements concerning positions in a labor dispute which are made during otherwise lawful labor picketing.

* * *

(Added by Stats.1976, c. 1293, p. 5778, § 2. Amended by Stats.1984, c. 1437, § 1; Stats.1985, c. 497, § 1; Stats.1987, c. 1277, § 2; Stats.1994, c. 407 (S.B.1595), § 1; Stats.2005, c. 420 (A.B.1400), § 5.)

§ 51.8. Discrimination; franchises

<u>(a)</u> No franchisor shall discriminate in the granting of franchises solely * * * <u>on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51</u> of the franchisee and the * * * composition of a neighborhood or geographic area <u>reflecting any characteristic listed or defined in subdivision (b) or (e) of Section 51</u> in which the franchise is located. Nothing in this section shall be interpreted to prohibit a franchisor from granting a franchise to prospective franchisees as part of a program or programs to make franchises available to persons lacking the capital, training, business experience, or other qualifications ordinarily required of franchisees, or any other affirmative action program adopted by the franchisor.

<u>(b)</u> Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(Added by Stats.1980, c. 1303, § 1. Amended by Stats.1987, c. 159, § 3; Stats.1992, c. 913 (A.B.1077), § 3.4; Stats.1998, c. 195 (A.B.2702), § 3; Stats.2005, c. 420 (A.B.1400), § 6.)

§ 51.9. Sexual harassment; business, service and professional relationships

(a) A person is liable in a cause of action for sexual harassment under this section when the plaintiff proves all of the following elements:

(1) There is a business, service, or professional relationship between the plaintiff and defendant. Such a relationship may exist between a plaintiff and a person, including, but not limited to, any of the following persons:

(A) Physician, psychotherapist, or dentist. For purposes of this section, "psychotherapist" has the same meaning as set forth in paragraph (1) of subdivision (c) of Section 728 of the Business and Professions Code.

(B) Attorney, holder of a master's degree in social work, real estate agent, real estate appraiser, accountant, banker, trust officer, financial planner loan officer, collection service, building contractor, or escrow loan officer.

(C) Executor, trustee, or administrator.

(D) Landlord or property manager.

(E) Teacher.

(F) A relationship that is substantially similar to any of the above.

(2) The defendant has made sexual advances, solicitations, sexual requests, demands for sexual compliance by the plaintiff, or engaged in other verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome and pervasive or severe.

(3) There is an inability by the plaintiff to easily terminate the relationship.

(4) The plaintiff has suffered or will suffer economic loss or disadvantage or personal injury, including, but not limited to, emotional distress or the violation of a statutory or constitutional right, as a result of the conduct described in paragraph (2).

(b) In an action pursuant to this section, damages shall be awarded as provided by subdivision (b) of Section 52.

(c) Nothing in this section shall be construed to limit application of any other remedies or rights provided under the law.

(d) The definition of sexual harassment and the standards for determining liability set forth in this section shall be limited to determining liability only with regard to a cause of action brought under this section.

(Added by Stats.1994, c. 710 (S.B.612), § 2. Amended by Stats.1996, c. 150 (S.B.195), § 1; Stats.1999, c. 964 (A.B.519), § 1.)

§ 51.10. Business establishments; sale or rental of housing; age discrimination; senior housing; intent and application of section

(a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. A business establishment may establish and preserve housing for senior citizens, pursuant to Section 51.11, except housing as to which Section 51.11 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100–430)[1] and implementing regulations against discrimination on the basis of familial status.

(b) This section is intended to clarify the holdings in Marina Point, Ltd. v. Wolfson (1982) 30 Cal.3d 721, and O'Connor v. Village Green Owners Association (1983) 33 Cal.3d 790.

(c) This section shall only apply to the County of Riverside.

(Added by Stats.1996, c. 1147 (S.B.2097), § 5. Amended by Stats.2004, c. 183 (A.B.3082), § 23.)

[1]See Short Title note under 42 U.S.C.A. § 3601 for classification of the Act to the Code.

§ 51.11. Riverside County; establishment or preservation of senior housing; legislative findings and declarations; definitions; requirements; qualification of development; application of section

(a) The Legislature finds and declares that this section is essential to establish and preserve housing for senior citizens. There are senior citizens who need special living environments, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) "Qualified permanent resident" means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) "Qualified permanent resident" also means a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, "disabled" means a person who has a disability as defined in subdivision (b) of Section 54. A " disabling injury or illness" means an illness or injury which results in a condition meeting the definition of disability set forth in subdivision (b) of Section 54.

(A) For any person who is a qualified permanent resident under paragraph (3) whose disabling condition ends, the owner, board of directors, or other governing body may require the formerly disabled resident to cease residing in the development upon receipt of six months' written notice; provided, however, that the owner, board of directors, or other governing body may allow the person to remain a resident for up to one year, after the disabling condition ends.

(B) The owner, board of directors, or other governing body of the senior citizen housing development may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under paragraph (3) if the owner, board of directors, or other governing body finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the coresident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in that hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the owner, board of directors, or other governing body in order to preserve the privacy of the affected persons.

The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

(4) "Senior citizen housing development" means a residential development developed with more than 20 units as a senior community by its developer and zoned as a senior community by a local governmental entity, or characterized as a senior community in its governing documents, as these are defined in Section 1351, or qualified as a senior community under the federal Fair Housing Amendments Act of 1988[1], as amended. Any senior citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code.

(5) "Dwelling unit" or "housing" means any residential accommodation other than a mobilehome.

(6) "Cohabitant" refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the Family Code.

(7) "Permitted health care resident" means a person hired to provide live–in, long–term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care. For the purposes of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the senior citizen from the dwelling unit only if both of the following are applicable:

(A) The senior citizen became absent from the dwelling due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.

(B) The absent senior citizen or an authorized person acting for the senior citizen submits a written request to the owner, board of directors, or governing board stating that the senior citizen desires that the permitted health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the development.

Upon written request by the senior citizen or an authorized person acting for the senior citizen, the owner, board of directors, or governing board shall have the discretion to allow a permitted health care resident to remain for a time period longer than 90 days from the date that the senior citizen's absence began, if it appears that the senior citizen will return within a period of time not to exceed an additional 90 days.

(c) The covenants, conditions, and restrictions and other documents or written policy shall set forth the limitations on occupancy, residency, or use on the basis of age. Any such limitation shall not be more exclusive than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted under subdivision (g) of this section or subdivision (b) of Section 51.12.

That limitation may be less exclusive, but shall at least require that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as his or her primary residence on a permanent basis. The application of the rules set forth in this subdivision regarding limitations on occupancy may result in less than all of the dwellings being actually occupied by a senior citizen.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not more than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(f) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited–equity housing cooperative, planned development, or multiple–family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(g) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on or after January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section by Chapter 1147 of the Statutes of 1996.

(h) A housing development may qualify as a senior citizen housing development under this section even though, as of January 1, 1997, it does not meet the definition of a senior citizen housing development specified in subdivision (b), if the development complies with that definition for every unit that becomes occupied after January 1, 1997, and if the development was once within that definition, and then became noncompliant with the definition as the result of any one of the following:

(1) The development was ordered by a court or a local, state, or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(2) The development received a notice of a pending or proposed action in, or by, a court, or a local, state, or federal enforcement agency, which action could have resulted in the development being ordered by a court or a state or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(3) The development agreed to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development by entering into a stipulation, conciliation agreement, or settlement agreement with a local, state, or federal enforcement agency or with a private party who had filed, or indicated an intent to file, a complaint against the development with a local, state, or federal enforcement agency, or file an action in a court.

(4) The development allowed persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development on the advice of counsel in order to prevent the possibility of an action being filed by a private party or by a local, state, or federal enforcement agency.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live–in, long–term, or hospice health care to a qualifying resident for compensation.

(j) This section shall only apply to the County of Riverside.

(Added by Stats.1996, c. 1147 (S.B.2097), § 6. Amended by Stats.1999, c. 324 (S.B.382), § 3; Stats.2000, c. 1004 (S.B.2011), § 5.)

[1]See Short Title note under 42 U.S.C.A. § 3601 for classification of the Act to the Code.

§ 51.12. Riverside County; senior housing; legislative findings and declarations; right of residency, occupancy, or use; application of section

(a) The Legislature finds and declares that the requirements for senior housing under Sections 51.10 and 51.11 are more stringent than the requirements for that housing under the federal Fair Housing Amendments Act of 1988 (Public Law 100–430).[1]

(b) Any person who resided in, occupied, or used, prior to January 1, 1990, a dwelling in a senior citizen housing development which relied on the exemption to the special design requirement provided by Section 51.4 as that section read prior to January 1, 2001, shall not be deprived of the right to continue that residency, or occupancy, or use as the result of the changes made to this section by the enactment of Senate Bill 1382 or Senate Bill 2011 at the 1999–2000 Regular Session of the Legislature.

(c) This section shall only apply to the County of Riverside.

(Added by Stats.1996, c. 1147 (S.B.2097), § 7. Amended by Stats.2000, c. 1004 (S.B.2011), § 6.)

[1]See Short Title note under 42 U.S.C.A. § 3601 for classification of the Act to the Code.

§ 52. Denial of civil rights or discrimination; damages; civil action by people or person aggrieved; intervention; unlawful practice complaint

(a) Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars ($4,000), and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51, 51.5, or 51.6.

(b) Whoever denies the right provided by Section 51.7 or 51.9, or aids, incites, or conspires in that denial, is liable for each and every offense for the actual damages suffered by any person denied that right and, in addition, the following:

(1) An amount to be determined by a jury, or a court sitting without a jury, for exemplary damages.

(2) A civil penalty of twenty–five thousand dollars ($25,000) to be awarded to the person denied the right provided by Section 51.7 in any action brought by the person denied the right, or by the Attorney General, a district attorney, or a city attorney. An action for that penalty brought pursuant to Section 51.7 shall be commenced within three years of the alleged practice.

(3) Attorney's fees as may be determined by the court.

(c) Whenever there is reasonable cause to believe that any person or group of persons is engaged in conduct of resistance to the full enjoyment of any of the rights described in this section, and that conduct is of that nature and is intended to deny the full exercise of those rights, the Attorney General, any district attorney or city attorney, or any person aggrieved by the conduct may bring a civil action in the appropriate court by filing with it a complaint. The complaint shall contain the following:

(1) The signature of the officer, or, in his or her absence, the individual acting on behalf of the officer, or the signature of the person aggrieved.

(2) The facts pertaining to the conduct.

(3) A request for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct, as the

complainant deems necessary to ensure the full enjoyment of the rights described in this section.

(d) Whenever an action has been commenced in any court seeking relief from the denial of equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States on account of race, color, religion, sex, national origin, or disability, the Attorney General or any district attorney or city attorney for or in the name of the people of the State of California may intervene in the action upon timely application if the Attorney General or any district attorney or city attorney certifies that the case is of general public importance. In that action, the people of the State of California shall be entitled to the same relief as if it had instituted the action.

(e) Actions brought pursuant to this section are independent of any other actions, remedies, or procedures that may be available to an aggrieved party pursuant to any other law.

(f) Any person claiming to be aggrieved by an alleged unlawful practice in violation of Section 51 or 51.7 may also file a verified complaint with the Department of Fair Employment and Housing pursuant to Section 12948 of the Government Code.

(g) This section does not require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor does this section augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(h) For the purposes of this section, "actual damages" means special and general damages. This subdivision is declaratory of existing law.

(Added by Stats.1905, c. 413, p. 553, § 2. Amended by Stats.1919, c. 210, p. 309, § 2; Stats.1923, c. 235, p. 485, § 2; Stats.1959, c. 1866, p. 4424, § 2; Stats.1974, c. 1193, p. 2568, § 2; Stats.1976, c. 366, p. 1013, § 2; Stats.1976, c. 1293, p. 5778, § 2.5; Stats.1978, c. 1212, p. 3927, § 1; Stats.1981, c. 521, § 1, eff. Sept. 16, 1981; Stats.1986, c. 244, § 1; Stats.1987, c. 159, § 4; Stats.1989, c. 459, § 1; Stats.1991, c. 607 (S.B.98), § 2; Stats.1991, c. 839 (A.B.1169), § 2; Stats.1992, c. 913 (A.B.1077), § 3.6; Stats.1994, c. 535 (S.B.1288), § 1; Stats.1998, c. 195 (A.B.2702), § 4; Stats.1999, c; 964 (A.B.519), § 2; Stats.2000, c. 98 (A.B.2719), § 2; Stats.2001, c. 261 (A.B.587), § 1; Stats.2005, c. 123 (A.B.378), § 1.)

§ 52.1. Civil actions for protection of rights; damages, injunctive and other equitable relief; violations of orders

(a) If a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney or city attorney may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the peaceable exercise or enjoyment of the right or rights secured. An action brought by the Attorney General, any district attorney, or any city attorney may also seek a civil penalty of twenty–five thousand dollars ($25,000). If this civil penalty is requested, it shall be assessed individually against each person who is determined to have violated this section and the penalty shall be awarded to each individual whose rights under this section are determined to have been violated.

(b) Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, as described in subdivision (a), may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages, including, but not limited to, damages under Section 52, injunctive relief, and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured.

(c) An action brought pursuant to subdivision (a) or (b) may be filed either in the superior court for the county in which the conduct complained of occurred or in the superior court for the county in which a person whose conduct complained of resides or has his or her place of business. An action brought by the Attorney General pursuant to subdivision (a) also may be filed in the superior court for any county wherein the Attorney General has an office, and in that case, the jurisdiction of the court shall extend throughout the state.

(d) If a court issues a temporary restraining order or a preliminary or permanent injunction in an action brought pursuant to subdivision (a) or (b), ordering a defendant to refrain from conduct or activities, the order issued shall include the following statement: VIOLATION OF THIS ORDER IS A CRIME PUNISHABLE UNDER SECTION 422.77 OF THE PENAL CODE.

(e) The court shall order the plaintiff or the attorney for the plaintiff to deliver, or the clerk of the court to mail, two copies of any order, extension, modification, or termination thereof granted pursuant to this section, by the close of the business day on which the order, extension, modification, or termination was granted, to each local law enforcement agency having jurisdiction over the residence of the plaintiff and any other locations where the court determines that acts of violence against the plaintiff are likely to occur. Those local law enforcement agencies shall be designated by the plaintiff or the attorney for the plaintiff. Each appropriate law enforcement agency receiving any order, extension, or modification of any order issued pursuant to this section shall serve forthwith one copy thereof upon the defendant. Each appropriate law enforcement agency shall provide to any law enforcement officer responding to the scene of reported violence, information as to the existence of, terms, and current status of, any order issued pursuant to this section.

(f) A court shall not have jurisdiction to issue an order or injunction under this section, if that order or injunction would be prohibited under Section 527.3 of the Code of Civil Procedure.

(g) An action brought pursuant to this section is independent of any other action, remedy, or procedure that may be available to an aggrieved individual under any other provision of law, including, but not limited to, an action, remedy, or procedure brought pursuant to Section 51.7.

(h) In addition to any damages, injunction, or other equitable relief awarded in an action brought pursuant to subdivision (b), the court may award the petitioner or plaintiff reasonable attorney's fees.

(i) A violation of an order described in subdivision (d) may be punished either by prosecution under Section 422.77 of the Penal Code, or by a proceeding for contempt brought pursuant to Title 5 (commencing with Section 1209) of Part 3 of the Code of Civil Procedure. However, in any proceeding pursuant to the Code of Civil Procedure, if it is determined that the person proceeded against is guilty of the contempt charged, in addition to any other relief, a fine may be imposed not exceeding one thousand dollars ($1,000), or the person may be ordered imprisoned in a county jail not exceeding six months, or the court may order both the imprisonment and fine.

(j) Speech alone is not sufficient to support an action brought pursuant to subdivision (a) or (b), except upon a showing that the speech itself threatens violence against a specific person or group of persons; and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat.

(k) No order issued in any proceeding brought pursuant to subdivision (a) or (b) shall restrict the content of any person's speech. An order restricting the time, place, or manner of any person's speech shall do so only to the extent reasonably necessary to protect the peaceable exercise or enjoyment of constitutional or statutory rights,

consistent with the constitutional rights of the person sought to be enjoined.
(Added by Stats.1987, c. 1277, § 3. Amended by Stats.1990, c. 392 (A.B.2683), § 1; Stats.1991, c. 607 (S.B.98), § 3; Stats.2000, c. 98 (A.B.2719), § 3; Stats.2001, c. 261 (A.B.587), § 2; Stats.2002, c. 784 (S.B.1316), § 11; Stats.2004, c. 700 (S.B.1234), § 1.)

§ 52.2. Court of competent jurisdiction; defined; actions

An action pursuant to Section 52 or 54.3 may be brought in any court of competent jurisdiction. A "court of competent jurisdiction" shall include small claims court if the amount of the damages sought in the action does not exceed five thousand dollars ($5,000).
(Added by Stats.1998, c. 195 (A.B.2702), § 5.)

§ 52.3. Law enforcement officers; prohibitions against conduct depriving persons of Constitutional rights, privileges, or immunities; civil actions

(a) No governmental authority, or agent of a governmental authority, or person acting on behalf of a governmental authority, shall engage in a pattern or practice of conduct by law enforcement officers that deprives any person of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or by the Constitution or laws of California.

(b) The Attorney General may bring a civil action in the name of the people to obtain appropriate equitable and declaratory relief to eliminate the pattern or practice of conduct specified in subdivision (a), whenever the Attorney General has reasonable cause to believe that a violation of subdivision (a) has occurred.
(Added by Stats.2000, c. 622 (A.B.2484), § 1.)

§ 52.4. Civil action for damages arising from gender violence

(a) Any person who has been subjected to gender violence may bring a civil action for damages against any responsible party. The plaintiff may seek actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney's fees and costs.

(b) An action brought pursuant to this section shall be commenced within three years of the act, or if the victim was a minor when the act occurred, within eight years after the date the plaintiff attains the age of majority or within three years after the date the plaintiff discovers or reasonably should have discovered the psychological injury or illness occurring after the age of majority that was caused by the act, whichever date occurs later.

(c) For purposes of this section, "gender violence," is a form of sex discrimination and means any of the following:

(1) One or more acts that would constitute a criminal offense under state law that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, committed at least in part based on the gender of the victim, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.

(2) A physical intrusion or physical invasion of a sexual nature under coercive conditions, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.

(d) Notwithstanding any other laws that may establish the liability of an employer for the acts of an employee, this section does not establish any civil liability of a person because of his or her status as an employer, unless the employer personally committed an act of gender violence.
(Added by Stats.2002, c. 842 (A.B.1928), § 2.)

§ 52.5. Civil action for damages to victims of human trafficking

(a) A victim of human trafficking, as defined in Section 236.1 of the Penal Code, may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney's fees and costs.

(b) In addition to the remedies specified herein, in any action under subdivision (a), the plaintiff may be awarded up to three times his or her actual damages or ten thousand dollars ($10,000), whichever is greater. In addition, punitive damages may also be awarded upon proof of the defendant's malice, oppression, fraud, or duress in committing the act of human trafficking.

(c) An action brought pursuant to this section shall be commenced within five years of the date on which the trafficking victim was freed from the trafficking situation, or if the victim was a minor when the act of human trafficking against the victim occurred, within eight years after the date the plaintiff attains the age of majority.

(d) If a person entitled to sue is under a disability at the time the cause of action accrues, so that it is impossible or impracticable for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability will toll the running of the statute of limitation for this action.

(1) Disability includes being a minor, insanity, imprisonment, or other incapacity or incompetence.

(2) The statute of limitations shall not run against an incompetent or minor plaintiff simply because a guardian ad litem has been appointed. A guardian ad litem's failure to bring a plaintiff's action within the applicable limitation period will not prejudice the plaintiff's right to do so after his or her disability ceases.

(3) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action, or due to threats made by the defendant causing duress upon the plaintiff.

(4) The suspension of the statute of limitations due to disability, lack of knowledge, or estoppel applies to all other related claims arising out of the trafficking situation.

(5) The running of the statute of limitations is postponed during the pendency of any criminal proceedings against the victim.

(e) The running of the statute of limitations may be suspended where a person entitled to sue could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

(f) A prevailing plaintiff may also be awarded reasonable attorney's fees and litigation costs including, but not limited to, expert witness fees and expenses as part of the costs.

(g) Any restitution paid by the defendant to the victim shall be credited against any judgment, award, or settlement obtained pursuant to this section. Any judgment, award, or settlement obtained pursuant to an action under this section shall be subject to the provisions of Section 13963 of the Government Code.

(h) Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim. As used in this section, a "criminal action" includes investigation and prosecution, and is pending until a final adjudication in the trial court, or dismissal.
(Added by Stats.2005, c. 240 (A.B.22), § 2.)

§ 53. Restrictions upon transfer or use of realty because of sex, race, color, religion, ancestry, national origin, or disability

(a) Every provision in a written instrument relating to real property <u>that</u> purports to forbid or restrict the conveyance, encumbrance, leasing, or mortgaging of that real property to any person * * * <u>because of any characteristic listed or defined in subdivision (b) or (e) of Section 51</u> is void, and every restriction or prohibition as to the use or occupation of real property because of * * * <u>any characteristic listed or defined in subdivision (b) or (e) of Section 51</u> is void.

(b) Every restriction or prohibition, whether by way of covenant, condition upon use or occupation, or upon transfer of title to real property, which restriction or prohibition directly or indirectly limits the acquisition, use or occupation of that property because of

* * * any characteristic listed or defined in subdivision (b) or (e) of Section 51 is void.

(c) In any action to declare that a restriction or prohibition specified in subdivision (a) or (b) is void, the court shall take judicial notice of the recorded instrument or instruments containing the prohibitions or restrictions in the same manner that it takes judicial notice of the matters listed in Section 452 of the Evidence Code.

(Added by Stats.1961, c. 1877, p. 3976, § 1. Amended by Stats.1965, c. 299, p. 1356, § 6, operative Jan. 1, 1967; Stats.1974, c. 1193, p. 2568, § 3; Stats.1987, c. 159, § 5; Stats.1992, c. 913 (A.B.1077), § 3.8; Stats.2005, c. 420 (A.B.1400), § 7.)

Part 2.6 CONFIDENTIALITY OF MEDICAL INFORMATION

Chapter 1 DEFINITIONS

§ 56. Short title

This part may be cited as the Confidentiality of Medical Information Act.

(Added by Stats.1981, c. 782, § 2.)

§ 56.05. Definitions

For purposes of this part:

(a) "Authorization" means permission granted in accordance with Section 56.11 or 56.21 for the disclosure of medical information.

(b) "Authorized recipient" means any person who is authorized to receive medical information pursuant to Section 56.10 or 56.20.

(c) "Contractor" means any person or entity that is a medical group, independent practice association, pharmaceutical benefits manager, or a medical service organization and is not a health care service plan or provider of health care. "Contractor" does not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code or pharmaceutical benefits managers licensed pursuant to the Knox–Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(d) "Health care service plan" means any entity regulated pursuant to the Knox–Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(e) "Licensed health care professional" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act or the Chiropractic Initiative Act, or Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(f) "Marketing" means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

"Marketing" does not include any of the following:

(1) Communications made orally or in writing for which the communicator does not receive direct or indirect remuneration, including, but not limited to, gifts, fees, payments, subsidies, or other economic benefits, from a third party for making the communication.

(2) Communications made to current enrollees solely for the purpose of describing a provider's participation in an existing health care provider network or health plan network of a Knox–Keene licensed health plan to which the enrollees already subscribe; communications made to current enrollees solely for the purpose of describing if, and the extent to which, a product or service, or payment for a product or service, is provided by a provider, contractor, or plan or included in a plan of benefits of a Knox–Keene licensed health plan to which the enrollees already subscribe; or communications made to plan enrollees describing the availability of more cost–effective pharmaceuticals.

(3) Communications that are tailored to the circumstances of a particular individual to educate or advise the individual about treatment options, and otherwise maintain the individual's adherence to a prescribed course of medical treatment, as provided in Section 1399.901 of the Health and Safety Code, for a chronic and seriously debilitating or life–threatening condition as defined in subdivisions (d) and (e) of Section 1367.21 of the Health and Safety Code, if the health care provider, contractor, or health plan receives direct or indirect remuneration, including, but not limited to, gifts, fees, payments, subsidies, or other economic benefits, from a third party for making the communication, if all of the following apply:

(A) The individual receiving the communication is notified in the communication in typeface no smaller than 14–point type of the fact that the provider, contractor, or health plan has been remunerated and the source of the remuneration.

(B) The individual is provided the opportunity to opt out of receiving future remunerated communications.

(C) The communication contains instructions in typeface no smaller than 14–point type describing how the individual can opt out of receiving further communications by calling a toll–free number of the health care provider, contractor, or health plan making the remunerated communications. No further communication may be made to an individual who has opted out after 30 calendar days from the date the individual makes the opt out request.

(g) "Medical information" means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, mental or physical condition, or treatment. "Individually identifiable" means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity.

(h) "Patient" means any natural person, whether or not still living, who received health care services from a provider of health care and to whom medical information pertains.

(i) "Pharmaceutical company" means any company or business, or an agent or representative thereof, that manufactures, sells, or distributes pharmaceuticals, medications, or prescription drugs. "Pharmaceutical company" does not include a pharmaceutical benefits manager, as included in subdivision (c), or a provider of health care.

(j) "Provider of health care" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code; any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act; any person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Provider of health care" does not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code.

(Added by Stats.1981, c. 782, § 2. Amended by Stats.1984, c. 1391, § 3; Stats.1999, c. 526 (S.B.19), § 1; Stats.2000, c. 1067 (S.B.2094), § 1; Stats.2002, c. 853 (A.B.2191), § 1; Stats.2003, c. 562 (A.B.715), § 1.)

§ 56.06. Corporations organized for the primary purpose of maintaining medical information in order to supply information to patient or health care provider for purposes of diagnosis or treatment; provider of health care; confidentiality; penalties

(a) Any corporation organized for the primary purpose of maintaining medical information in order to make the information available to the patient or to a provider of health care at the request of the patient or a provider of health care, for purposes of diagnosis or

treatment of the patient, shall be deemed to be a provider of health care subject to the requirements of this part. However, nothing in this section shall be construed to make a corporation specified in this subdivision a provider of health care for purposes of any law other than this part, including laws that specifically incorporate by reference the definitions of this part.

(b) Any corporation described in subdivision (a) shall maintain the same standards of confidentiality required of a provider of health care with respect to medical information disclosed to the corporation.

(c) Any corporation described in subdivision (a) shall be subject to the penalties for improper use and disclosure of medical information prescribed in this part.

(Added by Stats.1993, c. 1004 (A.B.336), § 1.)

§ 56.07. Medical profile, summary, or information provided; patient's written request; application

(a) Except as provided in subdivision (c), upon the patient's written request, any corporation described in Section 56.06, or any other entity that compiles or maintains medical information for any reason, shall provide the patient, at no charge, with a copy of any medical profile, summary, or information maintained by the corporation or entity with respect to the patient.

(b) A request by a patient pursuant to this section shall not be deemed to be an authorization by the patient for the release or disclosure of any information to any person or entity other than the patient.

(c) This section shall not apply to any patient records that are subject to inspection by the patient pursuant to Section 123110 of the Health and Safety Code and shall not be deemed to limit the right of a health care provider to charge a fee for the preparation of a summary of patient records as provided in Section 123130 of the Health and Safety Code. This section shall not apply to a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer licensed pursuant to the Insurance Code. This section shall not apply to medical information compiled or maintained by a fire and casualty insurer or its retained counsel in the regular course of investigating or litigating a claim under a policy of insurance that it has written. For the purposes of this section, a fire and casualty insurer is an insurer writing policies that may be sold by a fire and casualty licensee pursuant to Section 1625 of the Insurance Code.

(Added by Stats.2000, c. 1066 (S.B.1903), § 1.)

Chapter 2 DISCLOSURE OF MEDICAL INFORMATION BY PROVIDERS

§ 56.10. Authorization; necessity; exceptions

(a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant death, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards

review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97–248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient–identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment–related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator engaged in determining the need for an initial conservatorship or continuation of an existent conservatorship, if the patient is unable to give informed consent, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms "tissue bank" and "tissue" have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information, including the patient's name, city of residence, age, sex, and general condition, may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well–recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, use for marketing, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self–insured employer received under this section to any person or entity that is not engaged in providing direct

health care services to the patient or his or her provider of health care or health care service plan or insurer or self–insured employer.
(Added by Stats.2000, c. 1068 (A.B.1836), § 1.16, operative Jan. 1, 2003. Amended by Stats.2002, c. 123 (A.B.1958), § 1, operative Jan. 1, 2003; Stats.2003, c. 562 (A.B.715), § 2.)

§ 56.101. Destruction of records

Every provider of health care, health care service plan, pharmaceutical company, or contractor who creates, maintains, preserves, stores, abandons, destroys, or disposes of medical records shall do so in a manner that preserves the confidentiality of the information contained therein. Any provider of health care, health care service plan, pharmaceutical company, or contractor who negligently creates, maintains, preserves, stores, abandons, destroys, or disposes of medical records shall be subject to the remedies and penalties provided under subdivisions (b) and (c) of Section 56.36.
(Added by Stats.1999, c. 526 (S.B.19), § 3. Amended by Stats.2000, c. 1067 (S.B.2094), § 4; Stats.2002, c. 853 (A.B.2191), § 2.)

§ 56.102. Disclosure of medical information by pharmaceutical company; authorizations, releases, consents, or waivers; exceptions

(a) A pharmaceutical company may not require a patient, as a condition of receiving pharmaceuticals, medications, or prescription drugs, to sign an authorization, release, consent, or waiver that would permit the disclosure of medical information that otherwise may not be disclosed under Section 56.10 or any other provision of law, unless the disclosure is for one of the following purposes:

(1) Enrollment of the patient in a patient assistance program or prescription drug discount program.

(2) Enrollment of the patient in a clinical research project.

(3) Prioritization of distribution to the patient of a prescription medicine in limited supply in the United States.

(4) Response to an inquiry from the patient communicated in writing, by telephone, or by electronic mail.

(b) Except as provided in subdivision (a) or Section 56.10, a pharmaceutical company may not disclose medical information provided to it without first obtaining a valid authorization from the patient.
(Added by Stats.2002, c. 853 (A.B.2191), § 3.)

§ 56.104. Patient's participation in outpatient treatment with psychotherapist; request; content; application

(a) Notwithstanding subdivision (c) of Section 56.10, except as authorized in paragraph (1) of subdivision (c) of Section 56.10, no provider of health care, health care service plan, or contractor may release medical information to persons or entities authorized by law to receive that information pursuant to subdivision (c) of Section 56.10, if the requested information specifically relates to the patient's participation in outpatient treatment with a psychotherapist, unless the person or entity requesting that information submits to the patient pursuant to subdivision (b) and to the provider of health care, health care service plan, or contractor a written request, signed by the person requesting the information or an authorized agent of the entity requesting the information, that includes all of the following:

(1) The specific information relating to a patient's participation in outpatient treatment with a psychotherapist being requested and its specific intended use or uses.

(2) The length of time during which the information will be kept before being destroyed or disposed of. A person or entity may extend that timeframe, provided that the person or entity notifies the provider, plan, or contractor of the extension. Any notification of an extension shall include the specific reason for the extension, the intended use or uses of the information during the extended time, and the expected date of the destruction of the information.

(3) A statement that the information will not be used for any purpose other than its intended use.

(4) A statement that the person or entity requesting the information will destroy the information and all copies in the person's or entity's possession or control, will cause it to be destroyed, or will return the information and all copies of it before or immediately after the length of time specified in paragraph (2) has expired.

(b) The person or entity requesting the information shall submit a copy of the written request required by this section to the patient within 30 days of receipt of the information requested, unless the patient has signed a written waiver in the form of a letter signed and submitted by the patient to the provider of health care or health care service plan waiving notification.

(c) For purposes of this section, "psychotherapist" means a person who is both a "psychotherapist" as defined in Section 1010 of the Evidence Code and a "provider of health care" as defined in subdivision (i) of Section 56.05.

(d) This section does not apply to the disclosure or use of medical information by a law enforcement agency or a regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

(e) Nothing in this section shall be construed to grant any additional authority to a provider of health care, health care service plan, or contractor to disclose information to a person or entity without the patient's consent.
(Added by Stats.1999, c. 527 (A.B.416), § 3. Amended by Stats.2004, c. 463 (S.B.598), § 1.)

§ 56.105. Professional negligence actions; settlement or compromise; authorization to disclose medical records to persons or organizations defending professional liability

Whenever, prior to the service of a complaint upon a defendant in any action arising out of the professional negligence of a person holding a valid physician's and surgeon's certificate issued pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, a demand for settlement or offer to compromise is made on a patient's behalf, the demand or offer shall be accompanied by an authorization to disclose medical information to persons or organizations insuring, responsible for, or defending professional liability that the certificate holder may incur. The authorization shall be in accordance with Section 56.11 and shall authorize disclosure of that information that is necessary to investigate issues of liability and extent of potential damages in evaluating the merits of the demand for settlement or offer to compromise.

Notice of any request for medical information made pursuant to an authorization as provided by this section shall be given to the patient or the patient's legal representative. The notice shall describe the inclusive subject matter and dates of the materials requested and shall also authorize the patient or the patient's legal representative to receive, upon request, copies of the information at his or her expense.

Nothing in this section shall be construed to waive or limit any applicable privileges set forth in the Evidence Code except for the disclosure of medical information subject to the patient's authorization. Nothing in this section shall be construed as authorizing a representative of any person from whom settlement has been demanded to communicate in violation of the physician–patient privilege with a treating physician except for the medical information request.

The requirements of this section are independent of the requirements of Section 364 of the Code of Civil Procedure.
(Added by Stats.1985, c. 484, § 1.)

§ 56.11. Authorization; form and contents

Any person or entity that wishes to obtain medical information pursuant to subdivision (a) of Section 56.10, other than a person or entity authorized to receive medical information pursuant to subdivision (b) or (c) of Section 56.10, shall obtain a valid authorization for the release of this information.

An authorization for the release of medical information by a

provider of health care, health care service plan, pharmaceutical company, or contractor shall be valid if it:

(a) Is handwritten by the person who signs it or is in a typeface no smaller than 14–point type.

(b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no other purpose than to execute the authorization.

(c) Is signed and dated by one of the following:

(1) The patient. A patient who is a minor may only sign an authorization for the release of medical information obtained by a provider of health care, health care service plan, pharmaceutical company, or contractor in the course of furnishing services to which the minor could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).

(2) The legal representative of the patient, if the patient is a minor or an incompetent. However, authorization may not be given under this subdivision for the disclosure of medical information obtained by the provider of health care, health care service plan, pharmaceutical company, or contractor in the course of furnishing services to which a minor patient could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).

(3) The spouse of the patient or the person financially responsible for the patient, where the medical information is being sought for the sole purpose of processing an application for health insurance or for enrollment in a nonprofit hospital plan, a health care service plan, or an employee benefit plan, and where the patient is to be an enrolled spouse or dependent under the policy or plan.

(4) The beneficiary or personal representative of a deceased patient.

(d) States the specific uses and limitations on the types of medical information to be disclosed.

(e) States the name or functions of the provider of health care, health care service plan, pharmaceutical company, or contractor that may disclose the medical information.

(f) States the name or functions of the persons or entities authorized to receive the medical information.

(g) States the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information.

(h) States a specific date after which the provider of health care, health care service plan, pharmaceutical company, or contractor is no longer authorized to disclose the medical information.

(i) Advises the person signing the authorization of the right to receive a copy of the authorization.

(Added by Stats.1981, c. 782, § 2. Amended by Stats.1999, c. 526 (S.B.19), § 4; Stats.2000, c. 1066 (S.B.1903), § 3; Stats.2002, c. 853 (A.B.2191), § 4; Stats.2003, c. 562 (A.B.715), § 3.)

§ 56.12. Copy of authorization to patient or signatory on demand

Upon demand by the patient or the person who signed an authorization, a provider of health care, health care service plan, pharmaceutical company, or contractor possessing the authorization shall furnish a true copy thereof.

(Added by Stats.1981, c. 782, § 2. Amended by Stats.1999, c. 526 (S.B.19), § 5; Stats.2002, c. 853 (A.B.2191), § 5.)

§ 56.13. Further disclosure by recipient of medical information

A recipient of medical information pursuant to an authorization as provided by this chapter or pursuant to the provisions of subdivision (c) of Section 56.10 may not further disclose that medical information except in accordance with a new authorization that meets the requirements of Section 56.11, or as specifically required or permitted by other provisions of this chapter or by law.

(Added by Stats.1981, c. 782, § 2.)

§ 56.14. Communication of limitations of authorization to recipient of medical information

A provider of health care, health care service plan, or contractor that discloses medical information pursuant to the authorizations required by this chapter shall communicate to the person or entity to which it discloses the medical information any limitations in the authorization regarding the use of the medical information. No provider of health care, health care service plan, or contractor that has attempted in good faith to comply with this provision shall be liable for any unauthorized use of the medical information by the person or entity to which the provider, plan, or contractor disclosed the medical information.

(Added by Stats.1981, c. 782, § 2. Amended by Stats.1999, c. 526 (S.B.19), § 6.)

§ 56.15. Cancellation or modification of authorization; written notice

Nothing in this part shall be construed to prevent a person who could sign the authorization pursuant to subdivision (c) of Section 56.11 from cancelling or modifying an authorization. However, the cancellation or modification shall be effective only after the provider of health care actually receives written notice of the cancellation or modification.

(Added by Stats.1981, c. 782, § 2.)

§ 56.16. Release of limited information on specific patient; written request by patient to prohibit

Unless there is a specific written request by the patient to the contrary, nothing in this part shall be construed to prevent a provider, upon an inquiry concerning a specific patient, from releasing at its discretion any of the following information: the patient's name, address, age, and sex; a general description of the reason for treatment (whether an injury, a burn, poisoning, or some unrelated condition); the general nature of the injury, burn, poisoning, or other condition; the general condition of the patient; and any information that is not medical information as defined in subdivision (c) of Section 56.05.

(Added by Stats.1981, c. 782, § 2.)

Chapter 2.5 DISCLOSURE OF GENETIC TEST RESULTS BY A HEALTH CARE SERVICE PLAN

§ 56.17. Genetic test results; unlawful disclosure; written authorization; penalties

(a) This section shall apply to the disclosure of genetic test results contained in an applicant's or enrollee's medical records by a health care service plan.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's "written authorization," as used in this section, shall satisfy the following requirements:

(1) Is written in plain language and is in a typeface no smaller than 14–point type.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with Chapter 1 (commencing with Section 124975) of Part 5 of Division 106 of the Health and Safety Code, nor to disclosures required by the Department of Managed Care necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

(i) For purposes of this section, "genetic characteristic" has the same meaning as that set forth in subdivision (d) of Section 1374.7 of the Health and Safety Code.

(Added by Stats.1995, c. 695 (S.B.1020), § 1. Amended by Stats.1996, c. 1023 (S.B.1497), § 25, eff. Sept. 29, 1996; Stats.1996, c. 532 (S.B.1740), § 1; Stats.1999, c. 311 (S.B.1185), § 1; Stats.1999, c. 525 (A.B.78), § 5; Stats.2000, c. 857 (A.B.2903), § 4; Stats.2003, c. 562 (A.B.715), § 4.)

Chapter 3 USE AND DISCLOSURE OF MEDICAL INFORMATION BY EMPLOYERS

§ 56.20. Confidentiality; prohibition of discrimination due to refusal to sign authorization; prohibition of disclosure; exceptions

(a) Each employer who receives medical information shall establish appropriate procedures to ensure the confidentiality and protection from unauthorized use and disclosure of that information. These procedures may include, but are not limited to, instruction regarding confidentiality of employees and agents handling files containing medical information, and security systems restricting access to files containing medical information.

(b) No employee shall be discriminated against in terms or conditions of employment due to that employee's refusal to sign an authorization under this part. However, nothing in this section shall prohibit an employer from taking such action as is necessary in the absence of medical information due to an employee's refusal to sign an authorization under this part.

(c) No employer shall use, disclose, or knowingly permit its employees or agents to use or disclose medical information which the employer possesses pertaining to its employees without the patient having first signed an authorization under Section 56.11 or Section 56.21 permitting such use or disclosure, except as follows:

(1) The information may be disclosed if the disclosure is compelled by judicial or administrative process or by any other specific provision of law.

(2) That part of the information which is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment may be used or disclosed in connection with that proceeding.

(3) The information may be used only for the purpose of administering and maintaining employee benefit plans, including health care plans and plans providing short–term and long–term disability income, workers' compensation and for determining eligibility for paid and unpaid leave from work for medical reasons.

(4) The information may be disclosed to a provider of health care or other health care professional or facility to aid the diagnosis or treatment of the patient, where the patient or other person specified in subdivision (c) of Section 56.21 is unable to authorize the disclosure.

(d) If an employer agrees in writing with one or more of its employees or maintains a written policy which provides that particular types of medical information shall not be used or disclosed by the employer in particular ways, the employer shall obtain an authorization for such uses or disclosures even if an authorization would not otherwise be required by subdivision (c).

(Added by Stats.1981, c. 782, § 2.)

§ 56.21. Authorization for disclosure by employer

An authorization for an employer to disclose medical information shall be valid if it:

(a) Is handwritten by the person who signs it or is a[1] in typeface no smaller than 14–point type.

(b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no purpose other than to execute the authorization.

(c) Is signed and dated by one of the following:

(1) The patient, except that a patient who is a minor may only sign an authorization for the disclosure of medical information obtained by a provider of health care in the course of furnishing services to which the minor could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60) of Division 1.

(2) The legal representative of the patient, if the patient is a minor or incompetent. However, authorization may not be given under this subdivision for the disclosure of medical information which pertains to a competent minor and which was created by a provider of health care in the course of furnishing services to which a minor patient could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60) of Division 1.

(3) The beneficiary or personal representative of a deceased patient.

(d) States the limitations, if any, on the types of medical information to be disclosed.

(e) States the name or functions of the employer or person authorized to disclose the medical information.

(f) States the names or functions of the persons or entities authorized to receive the medical information.

(g) States the limitations, if any, on the use of the medical information by the persons or entities authorized to receive the medical information.

(h) States a specific date after which the employer is no longer authorized to disclose the medical information.

(i) Advises the person who signed the authorization of the right to receive a copy of the authorization.

(Added by Stats.1981, c. 782, § 2. Amended by Stats.2003, c. 562 (A.B.715), § 5.)

[1]So in enrolled bill.

§ 56.22. Copy of authorization to patient or signatory

Upon demand by the patient or the person who signed an authorization, an employer possessing the authorization shall furnish a true copy thereof.

(Added by Stats.1981, c. 782, § 2.)

§ 56.23. Communication of limitations of authorization to person to whom disclosure made

An employer that discloses medical information pursuant to an authorization required by this chapter shall communicate to the person or entity to which it discloses the medical information any limitations in the authorization regarding the use of the medical information. No employer that has attempted in good faith to comply with this provision shall be liable for any unauthorized use of the medical information by the person or entity to which the employer disclosed the medical information.
(Added by Stats.1981, c. 782, § 2.)

§ 56.24. Cancellation or modification of authorization

Nothing in this part shall be construed to prevent a person who could sign the authorization pursuant to subdivision (c) of Section 56.21 from cancelling or modifying an authorization. However, the cancellation or modification shall be effective only after the employer actually receives written notice of the cancellation or modification.
(Added by Stats.1981, c. 782, § 2.)

§ 56.245. Further disclosure by recipient of medical information

A recipient of medical information pursuant to an authorization as provided by this chapter may not further disclose such medical information unless in accordance with a new authorization that meets the requirements of Section 56.21, or as specifically required or permitted by other provisions of this chapter or by law.
(Added by Stats.1981, c. 782, § 2.)

Chapter 4 RELATIONSHIP OF CHAPTERS 2 AND 3

§ 56.25. Disclosure by employer who is provider of health care

(a) An employer that is a provider of health care shall not be deemed to have violated Section 56.20 by disclosing, in accordance with Chapter 2 (commencing with Section 56.10), medical information possessed in connection with providing health care services to the provider's patients.

(b) An employer shall not be deemed to have violated Section 56.20 because a provider of health care that is an employee or agent of the employer uses or discloses, in accordance with Chapter 2 (commencing with Section 56.10), medical information possessed by the provider in connection with providing health care services to the provider's patients.

(c) A provider of health care that is an employer shall not be deemed to have violated Section 56.10 by disclosing, in accordance with Chapter 3 (commencing with Section 56.20), medical information possessed in connection with employing the provider's employees. Information maintained by a provider of health care in connection with employing the provider's employees shall not be deemed to be medical information for purposes of Chapter 3 (commencing with Section 56.20), unless it would be deemed medical information if received or maintained by an employer that is not a provider of health care.
(Added by Stats.1981, c. 782, § 2.)

Chapter 5 USE AND DISCLOSURE OF MEDICAL AND OTHER INFORMATION BY THIRD PARTY ADMINISTRATORS AND OTHERS

§ 56.26. Prohibition; exceptions; inapplicability of section

(a) No person or entity engaged in the business of furnishing administrative services to programs that provide payment for health care services shall knowingly use, disclose, or permit its employees or agents to use or disclose medical information possessed in connection with performing administrative functions for a program, except as reasonably necessary in connection with the administration or maintenance of the program, or as required by law, or with an authorization.

(b) An authorization required by this section shall be in the same form as described in Section 56.21, except that "third party administrator" shall be substituted for "employer" wherever it appears in Section 56.21.

(c) This section shall not apply to any person or entity that is subject to the Insurance Information Privacy Act or to Chapter 2 (commencing with Section 56.10) or Chapter 3 (commencing with Section 56.20).
(Added by Stats.1981, c. 782, § 2. Amended by Stats.2004, c. 183 (A.B.3082), § 24.)

§ 56.265. Annuity contracts; disclosure of individually identifiable information concerning health, medical or genetic history; prohibition

A person or entity that underwrites or sells annuity contracts or contracts insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, and any affiliate of that person or entity, shall not disclose individually identifiable information concerning the health of, or the medical or genetic history of, a customer, to any affiliated or nonaffiliated depository institution, or to any other affiliated or nonaffiliated third party for use with regard to the granting of credit.
(Added by Stats.2000, c. 278 (A.B.2797), § 2.)

Chapter 6 RELATIONSHIP TO EXISTING LAW

§ 56.27. Employer that is insurance institution, agent or support organization; disclosure not in violation of § 56.20

An employer that is an insurance institution, insurance agent, or insurance support organization subject to the Insurance Information and Privacy Protection Act, Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, shall not be deemed to have violated Section 56.20 by disclosing medical information gathered in connection with an insurance transaction in accordance with that act.
(Added by Stats.1981, c. 782, § 2.)

§ 56.28. Patient's right to access

Nothing in this part shall be deemed to affect existing laws relating to a patient's right of access to his or her own medical information, or relating to disclosures made pursuant to Section 1158 of the Evidence Code, or relating to privileges established under the Evidence Code.
(Added by Stats.1981, c. 782, § 2.)

§ 56.29. Information Practices Act of 1977; applicability

(a) Nothing in Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 shall be construed to permit the acquisition or disclosure of medical information regarding a patient without an authorization, where the authorization is required by this part.

(b) The disclosure of medical information regarding a patient which is subject to subdivision (b) of Section 1798.24 shall be made only with an authorization which complies with the provisions of this part. Such disclosure may be made only within the time limits specified in subdivision (b) of Section 1798.24.

(c) Where the acquisition or disclosure of medical information regarding a patient is prohibited or limited by any provision of Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3, the prohibition or limit shall be applicable in addition to the requirements of this part.
(Added by Stats.1981, c. 782, § 2.)

§ 56.30. Exemptions from limitations of this part

The disclosure and use of the following medical information shall not be subject to the limitations of this part:

(a) (Mental health and developmental disabilities) 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) of the Welfare and Institutions Code.

(b) (Public social services) Information and records that are subject to Sections 10850, 14124.1, and 14124.2 of the Welfare and Institutions Code.

(c) (State health services, communicable diseases, developmental disabilities) Information and records maintained pursuant to former Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of the Health and Safety Code and pursuant to the Communicable Disease Prevention and Control Act (subdivision (a) of Section 27 of the Health and Safety Code).

(d) (Licensing and statistics) Information and records maintained pursuant to Division 2 (commencing with Section 1200) and Part 1 (commencing with Section 102100) of Division 102 of the Health and Safety Code; pursuant to Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code; and pursuant to Section 8608, 8817, or 8909 of the Family Code.

(e) (Medical survey, workers' safety) Information and records acquired and maintained or disclosed pursuant to Sections 1380 and 1382 of the Health and Safety Code and pursuant to Division 5 (commencing with Section 6300) of the Labor Code.

(f) (Industrial accidents) Information and records acquired, maintained, or disclosed pursuant to Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), and Division 4.7 (commencing with Section 6200) of the Labor Code.

(g) (Law enforcement) Information and records maintained by a health facility which are sought by a law enforcement agency under Chapter 3.5 (commencing with Section 1543) of Title 12 of Part 2 of the Penal Code.

(h) (Investigations of employment accident or illness) Information and records sought as part of an investigation of an on–the–job accident or illness pursuant to Division 5 (commencing with Section 6300) of the Labor Code or pursuant to Section 105200 of the Health and Safety Code.

(i) (Alcohol or drug abuse) Information and records subject to the federal alcohol and drug abuse regulations (Part 2 (commencing with Section 2.1) of subchapter A of Chapter 1 of Title 42 of the Code of Federal Regulations) or to Section 11977 of the Health and Safety Code dealing with narcotic and drug abuse.

(j) (Patient discharge data) Nothing in this part shall be construed to limit, expand, or otherwise affect the authority of the California Health Facilities Commission to collect patient discharge information from health facilities.

(k) Medical information and records disclosed to, and their use by, the Insurance Commissioner, the Director of the Department of Managed Health Care, the Division of Industrial Accidents, the Workers' Compensation Appeals Board, the Department of Insurance, or the Department of Managed Health Care.

(Added by Stats.1981, c. 782, § 2. Amended by Stats.1990, c. 1363 (A.B.3532), § 1, operative July 1, 1991; Stats.1992, c. 163 (A.B.2641), § 5, operative Jan. 1, 1994; Stats.1993, c. 1004 (A.B.336), § 2; Stats.1996, c. 1023 (S.B.1497), § 26, eff. Sept. 29, 1996; Stats.1999, c. 526 (S.B.19), § 7; Stats.2000, c. 1067 (S.B.2094), § 3.)

§ 56.31. Disclosure or use of medical information under subdivision (f) of Section 56.30; HIV infection or exposure; employment incident

Notwithstanding any other provision of law, nothing in subdivision (f) of Section 56.30 shall permit the disclosure or use of medical information regarding whether a patient is infected with or exposed to the human immunodeficiency virus without the prior authorization from the patient unless the patient is an injured worker claiming to be infected with or exposed to the human immunodeficiency virus through an exposure incident arising out of and in the course of employment.

(Added by Stats.1999, c. 766 (A.B.435), § 1.)

Chapter 7 VIOLATIONS

§ 56.35. Compensatory and punitive damages; attorneys' fees and costs

In addition to any other remedies available at law, a patient whose medical information has been used or disclosed in violation of Section 56.10 or 56.104 or 56.20 or subdivision (a) of Section 56.26 and who has sustained economic loss or personal injury therefrom may recover compensatory damages, punitive damages not to exceed three thousand dollars ($3,000), attorneys' fees not to exceed one thousand dollars ($1,000), and the costs of litigation.

(Added by Stats.1981, c. 782, § 2. Amended by Stats.1999, c. 527 (A.B.416), § 4.)

§ 56.36. Misdemeanors; violations; remedies

(a) Any violation of the provisions of this part that results in economic loss or personal injury to a patient is punishable as a misdemeanor.

(b) In addition to any other remedies available at law, any individual may bring an action against any person or entity who has negligently released confidential information or records concerning him or her in violation of this part, for either or both of the following:

(1) Nominal damages of one thousand dollars ($1,000). In order to recover under this paragraph, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the patient.

(c)(1) In addition, any person or entity that negligently discloses medical information in violation of the provisions of this part shall also be liable, irrespective of the amount of damages suffered by the patient as a result of that violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars ($2,500) per violation.

(2)(A) Any person or entity, other than a licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part shall be liable for an administrative fine or civil penalty not to exceed twenty–five thousand dollars ($25,000) per violation.

(B) Any licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part shall be liable on a first violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars ($2,500) per violation, or on a second violation for an administrative fine or civil penalty not to exceed ten thousand dollars ($10,000) per violation, or on a third and subsequent violation for an administrative fine or civil penalty not to exceed twenty–five thousand dollars ($25,000) per violation. Nothing in this subdivision shall be construed to limit the liability of a health care service plan, a contractor, or a provider of health care that is not a licensed health care professional for any violation of this part.

(3)(A) Any person or entity, other than a licensed health care professional, who knowingly or willfully obtains or uses medical information in violation of this part for the purpose of financial gain shall be liable for an administrative fine or civil penalty not to exceed two hundred fifty thousand dollars ($250,000) per violation and shall also be subject to disgorgement of any proceeds or other consideration obtained as a result of the violation.

(B) Any licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part for financial gain shall be liable on a first violation, for an administrative fine or civil penalty not to exceed five thousand dollars ($5,000) per violation, or on a second violation for an administrative fine or civil penalty not to exceed twenty–five thousand dollars

($25,000) per violation, or on a third and subsequent violation for an administrative fine or civil penalty not to exceed two hundred fifty thousand dollars ($250,000) per violation and shall also be subject to disgorgement of any proceeds or other consideration obtained as a result of the violation. Nothing in this subdivision shall be construed to limit the liability of a health care service plan, a contractor, or a provider of health care that is not a licensed health care professional for any violation of this part.

(4) Nothing in this subdivision shall be construed as authorizing an administrative fine or civil penalty under both paragraphs (2) and (3) for the same violation.

(5) Any person or entity who is not permitted to receive medical information pursuant to this part and who knowingly and willfully obtains, discloses, or uses medical information without written authorization from the patient shall be liable for a civil penalty not to exceed two hundred fifty thousand dollars ($250,000) per violation.

(d) In assessing the amount of an administrative fine or civil penalty pursuant to subdivision (c), the licensing agency or certifying board or court shall consider any one or more of the relevant circumstances presented by any of the parties to the case including, but not limited to, the following:

(1) Whether the defendant has made a reasonable, good faith attempt to comply with this part.

(2) The nature and seriousness of the misconduct.

(3) The harm to the patient, enrollee, or subscriber.

(4) The number of violations.

(5) The persistence of the misconduct.

(6) The length of time over which the misconduct occurred.

(7) The willfulness of the defendant's misconduct.

(8) The defendant's assets, liabilities, and net worth.

(e)(1) The civil penalty pursuant to subdivision (c) shall be assessed and recovered in a civil action brought in the name of the people of the State of California in any court of competent jurisdiction by any of the following:

(A) The Attorney General.

(B) Any district attorney.

(C) Any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance.

(D) Any city attorney of a city.

(E) Any city attorney of a city and county having a population in excess of 750,000, with the consent of the district attorney.

(F) A city prosecutor in any city having a full–time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county.

(2) If the action is brought by the Attorney General, one–half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one–half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in paragraph (3), if the action is brought by a city attorney or city prosecutor, one–half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered and one–half to the treasurer of the county in which the judgment was entered.

(3) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered.

(4) Nothing in this section shall be construed as authorizing both an administrative fine and civil penalty for the same violation.

(5) Imposition of a fine or penalty provided for in this section shall not preclude imposition of any other sanctions or remedies authorized by law.

(f) For purposes of this section, "knowing" and "willful" shall have the same meanings as in Section 7 of the Penal Code.

(g) No person who discloses protected medical information in accordance with the provisions of this part shall be subject to the penalty provisions of this part.

(Added by Stats.1981, c. 782, § 2. Amended by Stats.1999, c. 526 (S.B.19), § 8.)

§ 56.37. Authorization, release, consent, or waiver; enforceability

(a) No provider of health care, health care service plan, or contractor may require a patient, as a condition of receiving health care services, to sign an authorization, release, consent, or waiver that would permit the disclosure of medical information that otherwise may not be disclosed under Section 56.10 or any other provision of law. However, a health care service plan or disability insurer may require relevant enrollee or subscriber medical information as a condition of the medical underwriting process, provided that Sections 1374.7 and 1389.1 of the Health and Safety Code are strictly observed.

(b) Any waiver by a patient of the provisions of this part, except as authorized by Section 56.11 or 56.21 or subdivision (b) of Section 56.26, shall be deemed contrary to public policy and shall be unenforceable.

(Added by Stats.1981, c. 782, § 2. Amended by Stats.1999, c. 526 (S.B.19), § 9.)

OBLIGATIONS IN GENERAL — OBLIGATIONS

Division 3 OBLIGATIONS

Part 4 OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS

Title 1.8 PERSONAL DATA

Chapter 1 INFORMATION PRACTICES ACT OF 1977

Article 1 GENERAL PROVISIONS AND LEGISLATIVE FINDINGS

§ 1798. Citation of chapter

This chapter shall be known and may be cited as the Information Practices Act of 1977.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.1. Legislative declaration and findings

The Legislature declares that the right to privacy is a personal and fundamental right protected by Section 1 of Article I of the Constitution of California and by the United States Constitution and that all individuals have a right of privacy in information pertaining to them. The Legislature further makes the following findings:

(a) The right to privacy is being threatened by the indiscriminate collection, maintenance, and dissemination of personal information and the lack of effective laws and legal remedies.

(b) The increasing use of computers and other sophisticated information technology has greatly magnified the potential risk to individual privacy that can occur from the maintenance of personal information.

(c) In order to protect the privacy of individuals, it is necessary that

the maintenance and dissemination of personal information be subject to strict limits.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

Article 2 DEFINITIONS

§ 1798.3. Definitions

As used in this chapter:

(a) The term "personal information" means any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.

(b) The term "agency" means every state office, officer, department, division, bureau, board, commission, or other state agency, except that the term agency shall not include:

(1) The California Legislature.

(2) Any agency established under Article VI of the California Constitution.

(3) The State Compensation Insurance Fund, except as to any records which contain personal information about the employees of the State Compensation Insurance Fund.

(4) A local agency, as defined in subdivision (a) of Section 6252 of the Government Code.

(c) The term "disclose" means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic or any other means to any person or entity.

(d) The term "individual" means a natural person.

(e) The term "maintain" includes maintain, acquire, use, or disclose.

(f) The term "person" means any natural person, corporation, partnership, limited liability company, firm, or association.

(g) The term "record" means any file or grouping of information about an individual that is maintained by an agency by reference to an identifying particular such as the individual's name, photograph, finger or voice print, or a number or symbol assigned to the individual.

(h) The term "system of records" means one or more records, which pertain to one or more individuals, which is maintained by any agency, from which information is retrieved by the name of an individual or by some identifying number, symbol or other identifying particular assigned to the individual.

(i) The term "governmental entity," except as used in Section 1798.26, means any branch of the federal government or of the local government.

(j) The term "commercial purpose" means any purpose which has financial gain as a major objective. It does not include the gathering or dissemination of newsworthy facts by a publisher or broadcaster.

(k) The term "regulatory agency" means the Department of Financial Institutions, the Department of Corporations, the Department of Insurance, the Department of Real Estate, and agencies of the United States or of any other state responsible for regulating financial institutions.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1978, c. 874, p. 2741, § 1, eff. Sept. 19, 1978; Stats.1979, c. 143, p. 330, § 1, eff. June 22, 1979; Stats.1980, c. 174, p. 391, § 1; Stats.1982, c. 604, p. 2579, § 1; Stats.1985, c. 595, § 2; Stats.1987, c. 1453, § 1; Stats.1994, c. 1010 (S.B.2053), § 40; Stats.1996, c. 1064 (A.B.3351), § 4, operative July 1, 1997; Stats.2005, c. 677 (S.B.512), § 1, eff. Oct. 7, 2005.)

Article 5 AGENCY REQUIREMENTS

§ 1798.14. Contents of records

Each agency shall maintain in its records only personal information which is relevant and necessary to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1985, c. 595, § 5.)

§ 1798.15. Sources of information

Each agency shall collect personal information to the greatest extent practicable directly from the individual who is the subject of the information rather than from another source.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1985, c. 595, § 6.)

§ 1798.16. Personal information; maintaining sources of information

(a) Whenever an agency collects personal information, the agency shall maintain the source or sources of the information, unless the source is the data subject or he or she has received a copy of the source document, including, but not limited to, the name of any source who is an individual acting in his or her own private or individual capacity. If the source is an agency, governmental entity or other organization, such as a corporation or association, this requirement can be met by maintaining the name of the agency, governmental entity, or organization, as long as the smallest reasonably identifiable unit of that agency, governmental entity, or organization is named.

(b) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D–3–99, whenever an agency electronically collects personal information, as defined by Section 11015.5 of the Government Code, the agency shall retain the source or sources or any intermediate form of the information, if either are created or possessed by the agency, unless the source is the data subject that has requested that the information be discarded or the data subject has received a copy of the source document.

(c) The agency shall maintain the source or sources of the information in a readily accessible form so as to be able to provide it to the data subject when they inspect any record pursuant to Section 1798.34. This section shall not apply if the source or sources are exempt from disclosure under the provisions of this chapter.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1998, c. 429 (S.B.1386), § 1; Stats.1999, c. 784 (A.B.724), § 7, eff. Oct. 10, 1999.)

§ 1798.17. Notice; periodic provision; contents

Each agency shall provide on or with any form used to collect personal information from individuals the notice specified in this section. When contact with the individual is of a regularly recurring nature, an initial notice followed by a periodic notice of not more than one–year intervals shall satisfy this requirement. This requirement is also satisfied by notification to individuals of the availability of the notice in annual tax–related pamphlets or booklets provided for them. The notice shall include all of the following:

(a) The name of the agency and the division within the agency that is requesting the information.

(b) The title, business address, and telephone number of the agency official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in those records.

(c) The authority, whether granted by statute, regulation, or executive order which authorizes the maintenance of the information.

(d) With respect to each item of information, whether submission of such information is mandatory or voluntary.

(e) The consequences, if any, of not providing all or any part of the requested information.

(f) The principal purpose or purposes within the agency for which the information is to be used.

(g) Any known or foreseeable disclosures which may be made of the information pursuant to subdivision (e) or (f) of Section 1798.24.

(h) The individual's right of access to records containing personal information which are maintained by the agency.

This section does not apply to any enforcement document issued

by an employee of a law enforcement agency in the performance of his or her duties wherein the violator is provided an exact copy of the document, or to accident reports whereby the parties of interest may obtain a copy of the report pursuant to Section 20012 of the Vehicle Code.

The notice required by this section does not apply to agency requirements for an individual to provide his or her name, identifying number, photograph, address, or similar identifying information, if this information is used only for the purpose of identification and communication with the individual by the agency, except that requirements for an individual's social security number shall conform with the provisions of the Federal Privacy Act of 1974 (Public Law 93–579).

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1978, c. 874, p. 2744, § 3.5, eff. Sept. 19, 1978; Stats.1982, c. 604, p. 2582, § 2.5; Stats.1985, c. 595, § 7.)

§ 1798.18. Maintenance of records; standards; transfers of records outside state government

Each agency shall maintain all records, to the maximum extent possible, with accuracy, relevance, timeliness, and completeness.

Such standard need not be met except when such records are used to make any determination about the individual. When an agency transfers a record outside of state government, it shall correct, update, withhold, or delete any portion of the record that it knows or has reason to believe is inaccurate or untimely.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.19. Contracts for the operation or maintenance of records; requirements of chapter; employees of agency

Each agency when it provides by contract for the operation or maintenance of records containing personal information to accomplish an agency function, shall cause, consistent with its authority, the requirements of this chapter to be applied to those records. For purposes of Article 10 (commencing with Section 1798.55), any contractor and any employee of the contractor, if the contract is agreed to on or after July 1, 1978, shall be considered to be an employee of an agency. Local government functions mandated by the state are not deemed agency functions within the meaning of this section.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1978, c. 874, p. 2744, § 4, eff. Sept. 19, 1978; Stats.1985, c. 595, § 8.)

§ 1798.20. Rules of conduct; instruction

Each agency shall establish rules of conduct for persons involved in the design, development, operation, disclosure, or maintenance of records containing personal information and instruct each such person with respect to such rules and the requirements of this chapter, including any other rules and procedures adopted pursuant to this chapter and the remedies and penalties for noncompliance.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1985, c. 595, § 9.)

§ 1798.21. Safeguards; administrative, technical and physical

Each agency shall establish appropriate and reasonable administrative, technical, and physical safeguards to ensure compliance with the provisions of this chapter, to ensure the security and confidentiality of records, and to protect against anticipated threats or hazards to their security or integrity which could result in any injury.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.22. Designation of employee responsible for agency compliance

Each agency shall designate an agency employee to be responsible for ensuring that the agency complies with all of the provisions of this chapter.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.23. Department of Justice; periodic review of personal information; exemption from access

The Department of Justice shall review all personal information in its possession every five years commencing July 1, 1978, to determine whether it should continue to be exempt from access pursuant to Section 1798.40.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1985, c. 595, § 10.)

Article 6 CONDITIONS OF DISCLOSURE

§ 1798.24. Personal information

No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the * * * information is disclosed, as follows:

(a) To the individual to whom the information pertains.

(b) With the prior written voluntary consent of the individual to whom the record pertains, but only if that consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.

(c) To the duly appointed guardian or conservator of the individual or a person representing the individual * * * if it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that this person is the authorized representative of the individual to whom the information pertains.

(d) To those officers, employees, attorneys, agents, or volunteers of the agency that has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.

(e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Section 1798.25. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.

(f) To a governmental entity when required by state or federal law.

(g) Pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(h) To a person who has provided the agency with advance, adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual.

(i) Pursuant to a determination by the agency that maintains information that compelling circumstances exist that affect the health or safety of an individual, if upon the disclosure notification is transmitted to the individual to whom the information pertains at his or her last known address. Disclosure shall not be made if it is in conflict with other state or federal laws.

(j) To the State Archives * * * as a record that has sufficient historical or other value to warrant its continued preservation by the California state government, or for evaluation by the Director of General Services or his or her designee to determine whether the record has further administrative, legal, or fiscal value.

(k) To any person pursuant to a subpoena, court order, or other

compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.

(*l*) To any person pursuant to a search warrant.

(m) Pursuant to Article 3 (commencing with Section 1800) of Chapter 1 of Division 2 of the Vehicle Code.

(n) For the sole purpose of verifying and paying government health care service claims made pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(*o*) To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

(p) To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the agency of a failure to comply with a specific state law that the agency is responsible for enforcing.

(q) To an adopted person and is limited to general background information pertaining to the adopted person's natural parents, provided that the information does not include or reveal the identity of the natural parents.

(r) To a child or a grandchild of an adopted person and disclosure is limited to medically necessary information pertaining to the adopted person's natural parents. However, the information, or the process for obtaining the information, shall not include or reveal the identity of the natural parents. The State Department of Social Services shall adopt regulations governing the release of information pursuant to this subdivision by July 1, 1985. The regulations shall require licensed adoption agencies to provide the same services provided by the department as established by this subdivision.

(s) To a committee of the Legislature or to a Member of the Legislature, or his or her staff when authorized in writing by the member, where the member has permission to obtain the information from the individual to whom it pertains or where the member provides reasonable assurance that he or she is acting on behalf of the individual.

(t)(1) To the University of California or a nonprofit educational institution conducting scientific research, provided the request for information * * * is approved by the Committee for the Protection of Human Subjects (CPHS) for the California Health and Human Services Agency (CHHSA). The CPHS approval required under this subdivision shall include a review and determination that all the following criteria have been satisfied:

(A) The researcher has provided a plan sufficient to protect personal information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect personal information from reasonable anticipated threats to the security or confidentiality of the information.

(B) The researcher has provided a sufficient plan to destroy or return all personal information as soon as it is no longer needed for the research project, unless the researcher has demonstrated an ongoing need for the personal information for the research project and has provided a long–term plan sufficient to protect the confidentiality of that information.

* * * (C) The researcher has provided sufficient written assurances that the personal * * * information will not be reused or disclosed to any other person or entity, or used in any manner, not approved in the research protocol, except as required by law or for authorized oversight of the research project.

(2) The CPHS shall, at a minimum, accomplish all of the following as part of its review and approval of the research project for the purpose of protecting personal information held in agency databases:

(A) Determine whether the requested personal information is needed to conduct the research.

(B) Permit access to personal information only if it is needed for the research project.

(C) Permit access only to the minimum necessary personal information needed for the research project.

(D) Require the assignment of unique subject codes that are not derived from personal information in lieu of social security numbers if the research can still be conducted without social security numbers.

(E) If feasible, and if cost, time, and technical expertise permit, require the agency to conduct a portion of the data processing for the researcher to minimize the release of personal information.

(3) Reasonable costs to the agency associated with the agency's process of protecting personal information under the conditions of CPHS approval may be billed to the researcher, including, but not limited to, the agency's costs for conducting a portion of the data processing for the researcher, removing personal information, encrypting or otherwise securing personal information, or assigning subject codes.

(4) This subdivision does not prohibit the CPHS from using its existing authority to enter into written agreements to enable other institutional review boards to approve projects or classes of projects for the CPHS, provided the data security requirements set forth in this subdivision are satisfied.

(u) To an insurer if authorized by Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code.

(v) Pursuant to Section 1909, 8009, or 18396 of the Financial Code.

This article shall not be construed to require the disclosure of personal information to the individual to whom the information pertains when that information may otherwise be withheld as set forth in Section 1798.40.

* * *

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1978, c. 874, p. 2745, § 5, eff. Sept. 19, 1978; Stats.1979, c. 143, p. 332, § 2, eff. June 22, 1979; Stats.1982, c. 604, p. 2583, § 3; Stats.1982, c. 957, p. 3454, § 1; Stats.1984, c. 2, § 1; Stats.1984, c. 724, § 1; Stats.1985, c. 595, § 11; Stats.1987, c. 1453, § 2; Stats.1991–1992, 1st Ex.Sess., c. 21 (A.B.66), § 33.5; Stats.1995, c. 480 (A.B.1482), § 1.1, eff. Oct. 2, 1995, operative Oct. 2, 1995; Stats.2005, c. 241 (S.B.13), § 2.)

§ 1798.24a. Exception; screening of prospective concessionaires

Notwithstanding Section 1798.24, information may be disclosed to any city, county, city and county, or district, or any officer or official thereof, if a written request is made to a local law enforcement agency and the information is needed to assist in the screening of a prospective concessionaire, and any affiliate or associate thereof, as these terms are defined in subdivision (k) of Section 432.7 of the Labor Code for purposes of consenting to, or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest. However, any summary criminal history information that may be disclosed pursuant to this section shall be limited to information pertaining to criminal convictions.

(Added by Stats.1992, c. 1026 (S.B.1769), § 2.)

§ 1798.24b. Disclosure of information to protection and advocacy agency for rights of persons with disabilities

(a) Notwithstanding Section 1798.24, except subdivision (v) thereof, information shall be disclosed to the protection and advocacy agency designated by the Governor in this state pursuant to federal law to protect and advocate for the rights of people with disabilities, as described in Division 4.7 (commencing with Section 4900) of the Welfare and Institutions Code.

(b) Information that shall be disclosed pursuant to this section includes all of the following information:

(1) Name.

(2) Address.

(3) Telephone number.

(4) Any other information necessary to identify that person whose consent is necessary for either of the following purposes:

(A) To enable the protection and advocacy agency to exercise its authority and investigate incidents of abuse or neglect of people with disabilities.

(B) To obtain access to records pursuant to Section 4903 of the Welfare and Institutions Code.

(Added by Stats.1991, c. 534 (S.B.1088), § 2. Amended by Stats.2003, c. 878 (S.B.577), § 2.)

Article 7 ACCOUNTING OF DISCLOSURES

§ 1798.25. Accounting for disclosure to law enforcement or regulatory agency; contents; routine disclosures

Each agency shall keep an accurate accounting of the date, nature, and purpose of each disclosure of a record made pursuant to subdivision (i), (k), (*l*), (*o*), or (p) of Section 1798.24. This accounting shall also be required for disclosures made pursuant to subdivision (e) or (f) of Section 1798.24 unless notice of the type of disclosure has been provided pursuant to Sections 1798.9 and 1798.10. The accounting shall also include the name, title, and business address of the person or agency to whom the disclosure was made. For the purpose of an accounting of a disclosure made under subdivision (*o*) of Section 1798.24, it shall be sufficient for a law enforcement or regulatory agency to record the date of disclosure, the law enforcement or regulatory agency requesting the disclosure, and whether the purpose of the disclosure is for an investigation of unlawful activity under the jurisdiction of the requesting agency, or for licensing, certification, or regulatory purposes by that agency.

Routine disclosures of information pertaining to crimes, offenders, and suspected offenders to law enforcement or regulatory agencies of federal, state, and local government shall be deemed to be disclosures pursuant to subdivision (e) of Section 1798.24 for the purpose of meeting this requirement.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1978, c. 874, p. 2747, § 6, eff. Sept. 19, 1978; Stats.1985, c. 595, § 12; Stats.1987, c. 1453, § 3.)

§ 1798.26. Motor vehicles; sale of registration information or information from drivers' licenses files; administrative procedures

With respect to the sale of information concerning the registration of any vehicle or the sale of information from the files of drivers' licenses, the Department of Motor Vehicles shall, by regulation, establish administrative procedures under which any person making a request for information shall be required to identify himself or herself and state the reason for making the request. These procedures shall provide for the verification of the name and address of the person making a request for the information and the department may require the person to produce the information as it determines is necessary in order to ensure that the name and address of the person are his or her true name and address. These procedures may provide for a 10–day delay in the release of the requested information. These procedures shall also provide for notification to the person to whom the information primarily relates, as to what information was provided and to whom it was provided. The department shall, by regulation, establish a reasonable period of time for which a record of all the foregoing shall be maintained.

The procedures required by this subdivision do not apply to any governmental entity, any person who has applied for and has been issued a requester code by the department, or any court of competent jurisdiction.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1987, c. 961, § 1; Stats.1989, c. 1213, § 2.)

§ 1798.27. Retention of accounting and original documents

Each agency shall retain the accounting made pursuant to Section 1798.25 for at least three years after the disclosure for which the accounting is made, or until the record is destroyed, whichever is shorter.

Nothing in this section shall be construed to require retention of the original documents for a three–year period, providing that the agency can otherwise comply with the requirements of this section.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.28. Correction of errors; notation of disputes; notice

Each agency, after July 1, 1978, shall inform any person or agency to whom a record containing personal information has been disclosed during the preceding three years of any correction of an error or notation of dispute made pursuant to Sections 1798.35 and 1798.36 if (1) an accounting of the disclosure is required by Section 1798.25 or 1798.26, and the accounting has not been destroyed pursuant to Section 1798.27, or (2) the information provides the name of the person or agency to whom the disclosure was made, or (3) the person who is the subject of the disclosed record provides the name of the person or agency to whom the information was disclosed.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1985, c. 595, § 13.)

§ 1798.29. Agencies owning, licensing, or maintaining, computerized data including personal information; disclosure of security breach; notice requirements

(a) Any agency that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) Any agency that maintains computerized data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(e) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social security number.

(2) Driver's license number or California Identification Card number.

(3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(f) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(g) For purposes of this section, "notice" may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E–mail notice when the agency has an e–mail address for the subject persons.

(B) Conspicuous posting of the notice on the agency's Web site page, if the agency maintains one.

(C) Notification to major statewide media.

(h) Notwithstanding subdivision (g), an agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this part shall be deemed to be in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

(Added by Stats.2002, c. 915 (S.B.1386), § 2, operative July 1, 2003; Stats.2002, c. 1054 (A.B.700), § 2, operative July 1, 2003.)

Article 8 ACCESS TO RECORDS AND ADMINISTRATIVE REMEDIES

§ 1798.30. Regulations or guidelines; procedure for implementation of article

Each agency shall either adopt regulations or publish guidelines specifying procedures to be followed in order fully to implement each of the rights of individuals set forth in this article.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1978, c. 874, p. 2747, § 7, eff. Sept. 19, 1978.)

§ 1798.32. Maintenance of records; rights of inquiry and notice; contents of notice; rules and regulations

Each individual shall have the right to inquire and be notified as to whether the agency maintains a record about himself or herself. Agencies shall take reasonable steps to assist individuals in making their requests sufficiently specific.

Any notice sent to an individual which in any way indicates that the agency maintains any record concerning that individual shall include the title and business address of the agency official responsible for maintaining the records, the procedures to be followed to gain access to the records, and the procedures to be followed for an individual to contest the contents of these records unless the individual has received this notice from the agency during the past year.

In implementing the right conferred by this section, an agency may specify in its rules or regulations reasonable times, places, and requirements for identifying an individual who requests access to a record, and for disclosing the contents of a record.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1978, c. 874, p. 2747, § 8, eff. Sept. 19, 1978; Stats.1991–1992, 1st Ex.Sess., c. 21 (A.B.66), § 33.6.)

§ 1798.33. Copies of records; fees

Each agency may establish fees to be charged, if any, to an individual for making copies of a record. Such fees shall exclude the cost of any search for and review of the record, and shall not exceed ten cents ($0.10) per page, unless the agency fee for copying is established by statute.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1978, c. 874, p. 2747, § 9, eff. Sept. 19, 1978.)

§ 1798.34. Inspection of personal information in records and accounting; time; copies; form; availability

(a) Except as otherwise provided in this chapter, each agency shall permit any individual upon request and proper identification to inspect all the personal information in any record containing personal information and maintained by reference to an identifying particular assigned to the individual within 30 days of the agency's receipt of the request for active records, and within 60 days of the agency's receipt of the request for records that are geographically dispersed or which are inactive and in central storage. Failure to respond within these time limits shall be deemed denial. In addition, the individual shall be permitted to inspect any personal information about himself or herself where it is maintained by reference to an identifying particular other than that of the individual, if the agency knows or should know that the information exists. The individual also shall be permitted to inspect the accounting made pursuant to Article 7 (commencing with Section 1798.25).

(b) The agency shall permit the individual, and, upon the individual's request, another person of the individual's own choosing to inspect all the personal information in the record and have an exact copy made of all or any portion thereof within 15 days of the inspection. It may require the individual to furnish a written statement authorizing disclosure of the individual's record to another person of the individual's choosing.

(c) The agency shall present the information in the record in a form reasonably comprehensible to the general public.

(d) Whenever an agency is unable to access a record by reference to name only, or when access by name only would impose an unreasonable administrative burden, it may require the individual to submit such other identifying information as will facilitate access to the record.

(e) When an individual is entitled under this chapter to gain access to the information in a record containing personal information, the information or a true copy thereof shall be made available to the individual at a location near the residence of the individual or by mail, whenever reasonable.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1982, c. 604, p. 2584, § 4; Stats.1985, c. 595, § 15.)

§ 1798.35. Amendment of records; procedure; notice

Each agency shall permit an individual to request in writing an amendment of a record and, shall within 30 days of the date of receipt of such request:

(a) Make each correction in accordance with the individual's request of any portion of a record which the individual believes is not accurate, relevant, timely, or complete and inform the individual of the corrections made in accordance with their request; or

(b) Inform the individual of its refusal to amend the record in accordance with such individual's request, the reason for the refusal, the procedures established by the agency for the individual to request a review by the head of the agency or an official specifically designated by the head of the agency of the refusal to amend, and the name, title, and business address of the reviewing official.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.36. Refusal to amend records; review; final determination; time; statement of individual's disagreement

Each agency shall permit any individual who disagrees with the refusal of the agency to amend a record to request a review of such refusal by the head of the agency or an official specifically designated by the head of such agency, and, not later than 30 days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such review period by 30 days. If, after such review, the reviewing official refuses to amend the record in accordance with the request, the agency shall permit the individual to

file with the agency a statement of reasonable length setting forth the reasons for the individual's disagreement.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.37. Disputed records; statements of individual's disagreement and rationale of agency for refusal of amendment; notation of disputed portions; copies

The agency, with respect to any disclosure containing information about which the individual has filed a statement of disagreement, shall clearly note any portion of the record which is disputed and make available copies of such individual's statement and copies of a concise statement of the reasons of the agency for not making the amendment to any person or agency to whom the disputed record has been or is disclosed.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.38. Promises or understandings concerning confidentiality of source; specified information in possession of agencies; protection of identity

If information, including letters of recommendation, compiled for the purpose of determining suitability, eligibility, or qualifications for employment, advancement, renewal of appointment or promotion, status as adoptive parents, or for the receipt of state contracts, or for licensing purposes, was received with the promise or, prior to July 1, 1978, with the understanding that the identity of the source of the information would be held in confidence and the source is not in a supervisory position with respect to the individual to whom the record pertains, the agency shall fully inform the individual of all personal information about that individual without identification of the source. This may be done by providing a copy of the text of the material with only such deletions as are necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the agency shall insure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to an individual's reputation, rights, benefits, privileges, or qualifications, or be used by an agency to make a determination that would affect an individual's rights, benefits, privileges, or qualifications. In institutions of higher education, "supervisory positions" shall not be deemed to include chairpersons of academic departments.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1985, c. 595, § 16.)

§ 1798.39. Records evidencing property rights

Sections 1798.35, 1798.36, and 1798.37 shall not apply to any record evidencing property rights.
(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.40. Nondisclosure of personal information to individual to whom information pertains; criteria

This chapter shall not be construed to require an agency to disclose personal information to the individual to whom the information pertains, if the information meets any of the following criteria:

(a) Is compiled for the purpose of identifying individual criminal offenders and alleged offenders and consists only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status.

(b) Is compiled for the purpose of a criminal investigation of suspected criminal activities, including reports of informants and investigators, and associated with an identifiable individual.

(c) Is contained in any record which could identify an individual and which is compiled at any stage of the process of enforcement of the criminal laws, from the arrest or indictment stage through release from supervision and including the process of extradition or the exercise of executive clemency.

(d) Is maintained for the purpose of an investigation of an individual's fitness for licensure or public employment, or of a grievance or complaint, or a suspected civil offense, so long as the information is withheld only so as not to compromise the investigation, or a related investigation. The identities of individuals who provided information for the investigation may be withheld pursuant to Section 1798.38.

(e) Would compromise the objectivity or fairness of a competitive examination for appointment or promotion in public service, or to determine fitness for licensure, or to determine scholastic aptitude.

(f) Pertains to the physical or psychological condition of the individual, if the agency determines that disclosure would be detrimental to the individual. The information shall, upon the individual's written authorization, be disclosed to a licensed medical practitioner or psychologist designated by the individual.

(g) Relates to the settlement of claims for work related illnesses or injuries and is maintained exclusively by the State Compensation Insurance Fund.

(h) Is required by statute to be withheld from the individual to whom it pertains.

This section shall not be construed to deny an individual access to information relating to him or her if access is allowed by another statute or decisional law of this state.
(Added by Stats.1985, c. 595, § 18.)

§ 1798.41. Finding that requested information is exempt from access; written notice; review; ex parte orders authorizing responses of no maintenance

(a) Except as provided in subdivision (c), if the agency determines that information requested pursuant to Section 1798.34 is exempt from access, it shall inform the individual in writing of the agency's finding that disclosure is not required by law.

(b) Except as provided in subdivision (c), each agency shall conduct a review of its determination that particular information is exempt from access pursuant to Section 1798.40, within 30 days from the receipt of a request by an individual directly affected by the determination, and inform the individual in writing of the findings of the review. The review shall be conducted by the head of the agency or an official specifically designated by the head of the agency.

(c) If the agency believes that compliance with subdivision (a) would seriously interfere with attempts to apprehend persons who are wanted for committing a crime or attempts to prevent the commission of a crime or would endanger the life of an informant or other person submitting information contained in the record, it may petition the presiding judge of the superior court of the county in which the record is maintained to issue an ex parte order authorizing the agency to respond to the individual that no record is maintained. All proceedings before the court shall be in camera. If the presiding judge finds that there are reasonable grounds to believe that compliance with subdivision (a) will seriously interfere with attempts to apprehend persons who are wanted for committing a crime or attempts to prevent the commission of a crime or will endanger the life of an informant or other person submitting information contained in the record, the judge shall issue an order authorizing the agency to respond to the individual that no record is maintained by the agency. The order shall not be issued for longer than 30 days but can be renewed at 30–day intervals. If a request pursuant to this section is received after the expiration of the order, the agency must either respond pursuant to subdivision (a) or seek a new order pursuant to this subdivision.
(Formerly § 1798.40, added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1982, c. 604, p. 2585, § 5. Renumbered § 1798.41 and amended by Stats.1985, c. 595, § 17.)

§ 1798.42. Disclosure of personal information relating to others; deletions

In disclosing information contained in a record to an individual, an agency shall not disclose any personal information relating to another individual which may be contained in the record. To comply with this section, an agency shall, in disclosing information, delete from disclosure such information as may be necessary. This section shall

not be construed to authorize withholding the identities of sources except as provided in Sections 1798.38 and 1798.40.

(Formerly § 1798.41, added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1982, c. 604, p. 2586, § 6. Renumbered § 1798.42 and amended by Stats.1985, c. 595, § 19.)

§ 1798.43. Disclosure of personal information to individual to whom information pertains; deletion of exempt information

In disclosing information contained in a record to an individual, an agency need not disclose any information pertaining to that individual which is exempt under Section 1798.40. To comply with this section, an agency may, in disclosing personal information contained in a record, delete from the disclosure any exempt information.

(Formerly § 1798.42, added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1982, c. 604, p. 2586, § 7. Renumbered § 1798.43 and amended by Stats.1985, c. 595, § 20.)

§ 1798.44. Application of article

This article applies to the rights of an individual to whom personal information pertains and not to the authority or right of any other person, agency, other state governmental entity, or governmental entity to obtain this information.

(Formerly § 1798.43, added by Stats.1978, c. 874, p. 2747, § 10, eff. Sept. 19, 1978. Renumbered § 1798.44 and amended by Stats.1985, c. 595, § 21.)

Article 9 CIVIL REMEDIES

§ 1798.45. Civil actions against agencies; grounds

An individual may bring a civil action against an agency whenever such agency does any of the following:

(a) Refuses to comply with an individual's lawful request to inspect pursuant to subdivision (a) of Section 1798.34.

(b) Fails to maintain any record concerning any individual with such accuracy, relevancy, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, opportunities of, or benefits to the individual that may be made on the basis of such record, if, as a proximate result of such failure, a determination is made which is adverse to the individual.

(c) Fails to comply with any other provision of this chapter, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.46. Actions for refusal to comply with requests for inspection; injunctions; proceedings de novo; in camera examination of records; attorney fees and costs

In any suit brought under the provisions of subdivision (a) of Section 1798.45:

(a) The court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from the complainant. In such a suit the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld as being exempt from the individual's right of access and the burden is on the agency to sustain its action.

(b) The court shall assess against the agency reasonable attorney's fees and other litigation costs reasonably incurred in any suit under this section in which the complainant has prevailed. A party may be considered to have prevailed even though he or she does not prevail on all issues or against all parties.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1985, c. 595, § 22.)

§ 1798.47. Injunctions; orders and judgments

Any agency that fails to comply with any provision of this chapter may be enjoined by any court of competent jurisdiction. The court may make any order or judgment as may be necessary to prevent the use or employment by an agency of any practices which violate this chapter.

Actions for injunction under this section may be prosecuted by the Attorney General, or any district attorney in this state, in the name of the people of the State of California whether upon his or her own complaint, or of a member of the general public, or by any individual acting in his or her own behalf.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1991–1992, 1st Ex.Sess., c. 21 (A.B.66), § 33.7.)

§ 1798.48. Failure to maintain records properly; noncompliance with provisions of chapter and rules; actual damages; costs; attorney fees

In any suit brought under the provisions of subdivision (b) or (c) of Section 1798.45, the agency shall be liable to the individual in an amount equal to the sum of:

(a) Actual damages sustained by the individual, including damages for mental suffering.

(b) The costs of the action together with reasonable attorney's fees as determined by the court.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.49. Jurisdiction; limitation of actions; nonexclusive rights and remedies

An action to enforce any liability created under Sections 1798.45 to 1798.48, inclusive, may be brought in any court of competent jurisdiction in the county in which the complainant resides, or has his principal place of business, or in which the defendant's records are situated, within two years from the date on which the cause of action arises, except that where a defendant has materially and willfully misrepresented any information required under this section to be disclosed to an individual who is the subject of the information and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this section, the action may be brought at any time within two years after discovery by the complainant of the misrepresentation. Nothing in Sections 1798.45 to 1798.48, inclusive, shall be construed to authorize any civil action by reason of any injury sustained as the result of any information practice covered by this chapter prior to July 1, 1978.

The rights and remedies set forth in this chapter shall be deemed to be nonexclusive and are in addition to all those rights and remedies which are otherwise available under any other provision of law.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.50. Personnel actions; qualifications of individuals; subjective opinions; liability

A civil action shall not lie under this article based upon an allegation that an opinion which is subjective in nature, as distinguished from a factual assertion, about an individual's qualifications, in connection with a personnel action concerning such an individual, was not accurate, relevant, timely, or complete.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.51. Lapse of time; corrections to records

Where a remedy other than those provided in Articles 8 and 9 is provided by law but is not available because of lapse of time an individual may obtain a correction to a record under this chapter but such correction shall not operate to revise or restore a right or remedy not provided by this chapter that has been barred because of lapse of time.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.53. Invasion of privacy; intentional disclosure of personal information; state or federal records; exemplary damages; attorney fees and costs

Any person, other than an employee of the state or of a local

government agency acting solely in his or her official capacity, who intentionally discloses information, not otherwise public, which they know or should reasonably know was obtained from personal information maintained by a state agency or from "records" within a "system of records" (as these terms are defined in the Federal Privacy Act of 1974 (P.L. 93–579; 5 U.S.C. 552a)) maintained by a federal government agency, shall be subject to a civil action, for invasion of privacy, by the individual to whom the information pertains.

In any successful action brought under this section, the complainant, in addition to any special or general damages awarded, shall be awarded a minimum of two thousand five hundred dollars ($2,500) in exemplary damages as well as attorney's fees and other litigation costs reasonably incurred in the suit.

The right, remedy, and cause of action set forth in this section shall be nonexclusive and is in addition to all other rights, remedies, and causes of action for invasion of privacy, inherent in Section 1 of Article I of the California Constitution.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1985, c. 595, § 23.)

Article 10 PENALTIES

§ 1798.55. Intentional violations; agency officers and employees; discipline; termination of employment

The intentional violation of any provision of this chapter or of any rules or regulations adopted thereunder, by an officer or employee of any agency shall constitute a cause for discipline, including termination of employment.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.56. False pretenses; requesting or obtaining records; misdemeanor

Any person who willfully requests or obtains any record containing personal information from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than five thousand dollars ($5,000), or imprisoned not more than one year, or both.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1985, c. 595, § 24.)

§ 1798.57. Wrongful disclosure of medical, psychiatric, or psychological information; economic loss or personal injury; misdemeanor

Except for disclosures which are otherwise required or permitted by law, the intentional disclosure of medical, psychiatric, or psychological information in violation of the disclosure provisions of this chapter is punishable as a misdemeanor if the wrongful disclosure results in economic loss or personal injury to the individual to whom the information pertains.

(Added by Stats.1986, c. 94, § 1, eff. May 13, 1986.)

Article 11 MISCELLANEOUS PROVISIONS

§ 1798.60. Names and addresses; distribution for commercial purposes, sale or rental

An individual's name and address may not be distributed for commercial purposes, sold, or rented by an agency unless such action is specifically authorized by law.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.61. Release of licensees' and applicants' names and addresses

(a) Nothing in this chapter shall prohibit the release of only names and addresses of persons possessing licenses to engage in professional occupations.

(b) Nothing in this chapter shall prohibit the release of only names and addresses of persons applying for licenses to engage in professional occupations for the sole purpose of providing those persons with informational materials relating to available professional educational materials or courses.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1978, c. 874, p. 2747, § 11, eff. Sept. 19, 1978; Stats.1979, c. 143, p. 333, § 3, eff. June 22, 1979; Stats.1982, c. 1001, p. 3686, § 1; Stats.2000, c. 962 (A.B.1965), § 1.)

§ 1798.62. Mailing lists; agencies; removal of names and addresses

Upon written request of any individual, any agency which maintains a mailing list shall remove the individual's name and address from such list, except that such agency need not remove the individual's name if such name is exclusively used by the agency to directly contact the individual.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.63. Construction of chapter

The provisions of this chapter shall be liberally construed so as to protect the rights of privacy arising under this chapter or under the Federal or State Constitution.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.64. Director of General Services; storage, processing and servicing of records; state archives; maintenance

(a) Each agency record which is accepted by the Director of General Services for storage, processing, and servicing in accordance with provisions of the State Administrative Manual for the purposes of this chapter shall be considered to be maintained by the agency which deposited the record and shall continue to be subject to the provisions of this chapter. The Director of General Services shall not disclose the record except to the agency which maintains the record, or pursuant to rules established by such agency which are not inconsistent with the provisions of this chapter.

(b) Each agency record pertaining to an identifiable individual which was or is transferred to the State Archives as a record which has sufficient historical or other value to warrant its continued preservation by the California state government, prior to or after July 1, 1978, shall, for the purposes of this chapter, be considered to be maintained by the archives.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.66. Access to records; time limitations; extension

The time limits specified in Article 8 (commencing with Section 1798.30) may be extended to 60 days by the Franchise Tax Board if the following conditions exist:

(a) The request is made during the period January 1 through June 30; and

(b) The records requested are stored on magnetic tape.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.67. Liens or encumbrances; state; disclosure of information relating to identity

Where an agency has recorded a document creating a lien or encumbrance on real property in favor of the state, nothing herein shall prohibit any such agency from disclosing information relating to the identity of the person against whom such lien or encumbrance has been recorded for the purpose of distinguishing such person from another person bearing the same or a similar name.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.68. Disclosure of personal or confidential information to district attorney; petition to disclose

(a) Information which is permitted to be disclosed under the provisions of subdivision (e), (f), or (*o*), of Section 1798.24 shall be provided when requested by a district attorney.

A district attorney may petition a court of competent jurisdiction to require disclosure of information when an agency fails or refuses to provide the requested information within 10 working days of a request. The court may require the agency to permit inspection unless

the public interest or good cause in withholding such records clearly outweighs the public interest in disclosure.

(b) Disclosure of information to a district attorney under the provisions of this chapter shall effect no change in the status of the records under any other provision of law.

(Added by Stats.1979, c. 601, p. 1873, § 1.)

§ 1798.69. Release of names and addresses; State Board of Equalization

(a) Except as provided in subdivision (b), the State Board of Equalization may not release the names and addresses of individuals who are registered with, or are holding licenses or permits issued by, the State Board of Equalization except to the extent necessary to verify resale certificates or to administer the tax and fee provisions of the Revenue and Taxation Code.

(b) Nothing in this section shall prohibit the release by the State Board of Equalization to, or limit the use by, any federal or state agency, or local government, of any data collected by the board that is otherwise authorized by law.

(Added by Stats.2000, c. 962 (A.B.1965), § 2.)

Article 12 CONSTRUCTION WITH OTHER LAWS

§ 1798.70. Superseding other provisions of state law

This chapter shall be construed to supersede any other provision of state law, including Section 6253.5 of the Government Code, or any exemption in Section 6254 or 6255 of the Government Code, which authorizes any agency to withhold from an individual any record containing personal information which is otherwise accessible under the provisions of this chapter.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1978, c. 874, p. 2748, § 12, eff. Sept. 19, 1978.)

§ 1798.71. Discovery; rights of litigants

This chapter shall not be deemed to abridge or limit the rights of litigants, including parties to administrative proceedings, under the laws, or case law, of discovery of this state.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.72. Personal information; disclosure of records to other than the subject; violation of other law

Nothing in this chapter shall be construed to authorize the disclosure of any record containing personal information, other than to the subject of such records, in violation of any other law.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.73. Privacy; constitutional rights

Nothing in this chapter shall be construed to deny or limit any right of privacy arising under Section 1 of Article I of the California Constitution.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.74. Student records

The provisions of Chapter 13 (commencing with Section 67110)[1] of Part 40 of the Education Code shall, with regard to student records, prevail over the provisions of this chapter.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

[1]So in chaptered copy.

§ 1798.75. Inspection of public records

This chapter shall not be deemed to supersede Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, except as to the provisions of Sections 1798.60, 1798.69, and 1798.70.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1979, c. 143, p. 334, § 4, eff. June 22, 1979; Stats.2000, c. 962 (A.B.1965), § 3.)

§ 1798.76. Law enforcement records; discovery in criminal or civil litigation

Nothing in this chapter shall be construed to revoke, modify, or alter in any manner any statutory provision or any judicial decision which (a) authorizes an individual to gain access to any law enforcement record, or (b) authorizes discovery in criminal or civil litigation.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.77. Modification, transfer, or destruction of records to avoid compliance with chapter prohibited; civil action; removal or destruction of requested information before access prohibited

Each agency shall ensure that no record containing personal information shall be modified, transferred, or destroyed to avoid compliance with any of the provisions of this chapter. In the event that an agency fails to comply with the provisions of this section, an individual may bring a civil action and seek the appropriate remedies and damages in accordance with the provisions of Article 9 (commencing with Section 1798.45).

An agency shall not remove or destroy personal information about an individual who has requested access to the information before allowing the individual access to the record containing the information.

(Added by Stats.1985, c. 595, § 26.)

§ 1798.78. Chapter deemed not to supersede Chapter 1299 of Statutes of 1976

This chapter shall not be deemed to supersede the provisions of Chapter 1299 of the Statutes of 1976.[1]

(Added by Stats.1985, c. 595, § 27.)

[1]Stats.1976, c. 1299 added Educ.C.1959, § 24317. See Education Code § 89546.

EDUCATION CODE — INSTRUCTION AND SERVICES

EDUCATION CODE

Title 2 ELEMENTARY AND SECONDARY EDUCATION

Division 4 INSTRUCTION AND SERVICES

Part 30 SPECIAL EDUCATION PROGRAMS

Sunset of special education programs, see Education Code § 62000 et seq.

Chapter 2 ADMINISTRATION

Sunset of special education programs, see Education Code § 62000 et seq.

Article 2 SUPERINTENDENT OF PUBLIC INSTRUCTION

Sunset of special education programs, see Education Code § 62000 et seq.

§ 56139. Monitoring of local educational agencies to ensure compliance with requirements related to provision of mental health services to individuals with exceptional needs and appropriate utilization of funds; report to legislature; contents; collaboration and meeting requirements

(a) The superintendent is responsible for monitoring local educational agencies to ensure compliance with the requirement to provide mental health services to individuals with exceptional needs pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and to ensure that funds provided for this purpose are appropriately utilized.

(b) The superintendent shall submit a report to the Legislature by April 1, 2005, that includes all of the following:

(1) A description of the data that is currently collected by the department related to pupils served and services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(2) A description of the existing monitoring processes used by the department to ensure that local educational agencies are complying with Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, including the monitoring performed to ensure the appropriate use of funds for programs identified in Section 64000.

(3) Recommendations on the manner in which to strengthen and improve monitoring by the department of the compliance by a local educational agency with the requirements of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, on the manner in which to strengthen and improve collaboration and coordination with the State Department of Mental Health in monitoring and data collection activities, and on the additional data needed related to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(c) The superintendent shall collaborate with the Director of the State Department of Mental Health in preparing the report required pursuant to subdivision (b) and shall convene at least one meeting of appropriate stakeholders and organizations, including a representative from the State Department of Mental Health and mental health directors, to obtain input on existing data collection and monitoring processes, and on ways to strengthen and improve the data collected and monitoring performed.

(Added by Stats.2004, c. 493 (S.B.1895), § 1, eff. Sept. 13, 2004.)

Sunset

Sunset of special education programs, see Education Code §§ 62000 et seq.

Chapter 4 IDENTIFICATION AND REFERRAL, ASSESSMENT, INSTRUCTIONAL PLANNING, IMPLEMENTATION, AND REVIEW

Sunset of special education programs, see Education Code § 62000 et seq.

Article 2 ASSESSMENT

Sunset of special education programs, see Education Code § 62000 et seq.

Sunset

Sunset of special education programs, see Education Code § 62000 et seq.

§ 56320. Educational needs; requirements

Before any action is taken with respect to the initial placement of an individual with exceptional needs in special education instruction, an individual assessment of the pupil's educational needs shall be conducted, by qualified persons, in accordance with requirements including, but not limited to, all the following:

(a) Testing and assessment materials and procedures used for the purposes of assessment and placement of individuals with exceptional needs are selected and administered so as not to be racially, culturally, or sexually discriminatory. Pursuant to subparagraph (B) of paragraph (6) of subsection (a) of Section 1412 of Title 20 of the United States Code, the materials and procedures shall be provided in the pupil's native language or mode of communication, unless it is clearly not feasible to do so.

(b) Tests and other assessment materials meet all the following requirements:

(1) Are provided and administered in the * * * language * * * and form most likely to yield accurate information on what the pupil knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer as required by clause (ii) of subparagraph (A) of paragraph (3) of subsection (b) of Section 1414 of Title 20 of the United States Code.

(2) * * * Are used for purposes for which the assessments or measures are valid and reliable.

(3) Are administered by trained and knowledgeable personnel and are administered in accordance with any instructions provided by the producer of the assessments, except that individually administered tests of intellectual or emotional functioning shall be administered by a credentialed school psychologist.

(c) Tests and other assessment materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

(d) Tests are selected and administered to best ensure that when a test administered to a pupil with impaired sensory, manual, or speaking skills produces test results that accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure.

(e) Pursuant to * * * subparagraph (B) of paragraph (2) of subsection (b) of Section 1414 of Title 20 of the United States Code, no single * * * measure or assessment is used as the sole criterion for determining whether a pupil is an individual with exceptional needs * * * or determining an appropriate educational program for the pupil.

(f) The pupil is assessed in all areas related to the suspected disability including, if appropriate, health and development, vision, including low vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self–help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. A developmental history * * * shall be obtained, when appropriate. For pupils with residual vision, a low vision assessment shall be provided in accordance with guidelines established pursuant to Section 56136. In assessing each pupil under this article, the assessment shall be conducted in accordance with subsections (h), (i), and (j) of Section 300.532 of Title 34 of the Code of Federal Regulations.

(g) The assessment of a pupil, including the assessment of a pupil with a suspected low incidence disability, shall be conducted by persons knowledgeable of that disability. Special attention shall be given to the unique educational needs, including, but not limited to, skills and the need for specialized services, materials, and equipment consistent with guidelines established pursuant to Section 56136.

(h) As part of an initial assessment, if appropriate, and as part of any reassessment under Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and this part, the group that includes members of the individualized education program team, and other qualified professionals, as appropriate, shall follow the procedures specified in subsection * * * (c) of Section 1414 of Title 20 of the United States Code. The group may conduct its review without a meeting.

(i) Each local educational agency shall ensure that assessments of individuals with exceptional needs who transfer from one district to another district in the same academic year are coordinated with the individual's prior and subsequent schools, as necessary and as expeditiously as possible, in accordance with subparagraph (D) of paragraph (3) of subsection (b) of Section 1414 of Title 20 of the United States Code, to ensure prompt completion of full assessment.

(Added by Stats.1980, c. 797, p. 2430, § 9, eff. July 28, 1980. Amended by Stats.1980, c. 1353, p. 4827, § 50, eff. Sept. 30, 1980; Stats.1981, c. 1044, p. 4008, § 9; Stats.1982, c. 1201, p. 4352, § 15, eff. Sept. 22, 1982; Stats.1982, c. 1334, p. 4946, § 3.5; Stats.1996, c. 661 (A.B.3188), § 2; Stats.2002, c. 492 (A.B.1859), § 21; Stats.2004, c. 161 (A.B.152), § 8, eff. July 16, 2004; Stats.2005, c. 653 (A.B.1662), § 18, eff. Oct. 7, 2005.)

§ 56320.1. Exceptional needs children under three years; identification, evaluation and assessment

All identification, evaluation, and assessment procedures for individuals with exceptional needs who are younger than three years of age shall be provided pursuant to Chapter 4.4 (commencing with Section 56425) and the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

(Added by Stats.1993, c. 1296 (A.B.369), § 14.4, eff. Oct. 11, 1993, operative Oct. 1, 1993.)

Sunset

Sunset of special education programs, see Education Code § 62000 et seq.

§ 56321. Development or revision of individualized education program; proposed assessment plan; requirements; parental consent

(a) If an assessment for the development or revision of the individualized education program is to be conducted, the parent or guardian of the pupil shall be given, in writing, a proposed assessment plan within 15 days of the referral for assessment not counting days between the pupil's regular school sessions or terms or days of school vacation in excess of five schooldays from the date of receipt of the referral, unless the parent or guardian agrees, in writing, to an extension. However, in any event, the assessment plan shall be developed within 10 days after the commencement of the subsequent regular school year or the pupil's regular school term as determined by each district's school calendar for each pupil for whom a referral has been made 10 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 15–day time shall recommence on the date that the pupil's regular schooldays reconvene. A copy of the notice of a parent's or guardian's rights shall be attached to the assessment plan. A written explanation of all the procedural safeguards under the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), and the rights and procedures contained in Chapter 5 (commencing with Section 56500), shall be included in the notice of a parent's or guardian's rights, including information on the procedures for requesting an informal meeting, prehearing mediation conference, mediation conference, or due process hearing; the timelines for completing each process; whether the process is optional; and the type of representative who may be invited to participate.

(b) The proposed assessment plan given to parents or guardians shall meet all the following requirements:

(1) Be in language easily understood by the general public.

(2) Be provided in the native language of the parent or guardian or other mode of communication used by the parent or guardian, unless to do so is clearly not feasible.

(3) Explain the types of assessments to be conducted.

(4) State that no individualized education program will result from the assessment without the consent of the parent.

(c) * * * The local educational agency proposing to conduct an initial assessment to determine if the child qualifies as an individual with exceptional needs shall obtain informed consent from the parent of the child before conducting the assessment, in accordance with subparagraph (D) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code. If the parent of the child does not provide consent for an initial assessment, or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial assessment utilizing the procedures described in Section 1415 of Title 20 of the United States Code and in accordance with paragraph (3) of subdivision (a) of Section 56501 and subdivision (e) of Section 56506. The parent or guardian shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. The assessment may begin immediately upon receipt of the consent.

(d) The local educational agency shall not be required to obtain informed consent from the parent of a child for an initial assessment to determine whether the child is an individual with exceptional needs under any of the following circumstances listed in subclause (II) of clause (iii) of subparagraph (D) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code:

(1) Despite reasonable efforts to do so, the local educational agency cannot discover the whereabouts of the parent of the child.

(2) The rights of the parent of the child have been terminated in accordance with state law.

(3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial assessment has been given by an individual appointed by the judge to represent the child.

(e) Consent for initial assessment may not be construed as consent for initial placement or initial provision of special education and related services to an individual with exceptional needs, pursuant to * * * subclause (I) of clause (i) of subparagraph (D) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code.

(f) In accordance with paragraph (3) of subsection (a) of Section 300.505 of Title 34 of the Code of Federal Regulations, parental consent is not required before reviewing existing data as part of an assessment or reassessment, or before administering a test or other assessment that is administered to all children, unless before administration of that test or assessment, consent is required of the parents of all the children.

(g) Pursuant to subparagraph (E) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code, the screening

of a pupil by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an assessment for eligibility for special education and related services.

(Added by Stats.1980, c. 797, p. 2430, § 9, eff. July 28, 1980. Amended by Stats.1980, c. 1353, p. 4827, § 51, eff. Sept. 30, 1980; Stats.1982, c. 1201, p. 4354, § 16, eff. Sept. 22, 1982; Stats.1992, c. 1360 (A.B.2773), § 12; Stats.2002, c. 492 (A.B.1859), § 22; Stats.2004, c. 161 (A.B.152), § 9, eff. July 16, 2004; Stats.2005, c. 653 (A.B.1662), § 19, eff. Oct. 7, 2005.)

§ 56321.1. Wards of the state; informed consent of parent

If the child is a ward of the state and is not residing with his or her parent, the agency shall, pursuant to clause (iii) of subparagraph (D) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code, make reasonable efforts to obtain the informed consent from the parent, as defined in Section 56028, of the child for an initial assessment to determine whether the child is an individual with exceptional needs.

(Added by Stats.2005, c. 653 (A.B.1662), § 20, eff. Oct. 7, 2005.)

§ 56321.5. Right to electronically record meetings

The copy of the notice of parent rights shall include the right to electronically record the proceedings of individualized education program meetings as specified in Section 56341.

(Added by Stats.1992, c. 106 (A.B.2267), § 1.)

Sunset

Sunset of special education programs, see Education Code § 62000 et seq.

§ 56322. Persons conducting assessment; competency; determination

The assessment shall be conducted by persons competent to perform the assessment, as determined by the school district, county office, or special education local plan area.

(Added by Stats.1980, c. 797, p. 2431, § 9, eff. July 28, 1980. Amended by Stats.1980, c. 1353, p. 4828, § 52, eff. Sept. 30, 1980; Stats.1982, c. 1201, p. 4354, § 17, eff. Sept. 22, 1982; Stats.1987, c. 1452, § 475.)

Sunset

Sunset of special education programs, see Education Code § 62000 et seq.

§ 56323. Admission to special education instruction; law governing

Admission of a pupil to special education instruction shall be made only in accordance with this article, Article 2.5 (commencing with Section 56333) and standards established by the board and upon a recommendation by the individualized education program team.

(Added by Stats.1980, c. 797, p. 2431, § 9, eff. July 28, 1980.)

Sunset

Sunset of special education programs, see Education Code § 62000 et seq.

§ 56324. Psychological assessment; health assessment

(a) Any psychological assessment of pupils shall be made in accordance with Section 56320 and shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed.

(b) Any health assessment of pupils shall be made in accordance with Section 56320 and shall be conducted by a credentialed school nurse or physician who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed.

(Added by Stats.1980, c. 797, p. 2431, § 9, eff. July 28, 1980. Amended by Stats.1980, c. 1353, p. 4828, § 53, eff. Sept. 30, 1980.)

Sunset

Sunset of special education programs, see Education Code § 62000 et seq.

§ 56325. Transfer of pupil from district not operating programs under same local plan; adoption of previously approved or development of new individualized education program; student records; funding

(a) * * * (1) As required by subclause (I) of clause (i) of subparagraph (C) of paragraph (2) of subsection (d) of Section 1414 of Title 20 of the United States Code, the following shall apply to special education programs for individuals with exceptional needs who transfer from district to district within the state. In the case of an individual with exceptional needs who has an individualized education program and transfers into a * * * district from a * * * district not operating programs under the same local plan in which he or she was last enrolled in a special education program * * * within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents, for a period not to exceed 30 days * * *, by which time the local educational agency shall adopt the previously approved individualized education program or shall develop, adopt, and implement a new individualized education program that is consistent with federal and state law.

(2) In the case of an individual with exceptional needs who has an individualized education program and transfers into a district from a district operating programs under the same special education local plan area of the district in which he or she was last enrolled in a special education program within the same academic year, the new district shall continue, without delay, to provide services comparable to those described in the existing approved individualized education program, unless the parent and the local educational agency agree to develop, adopt, and implement a new individualized education program that is consistent with federal and state law.

(3) As required by subclause (II) of clause (i) of subparagraph (C) of paragraph (2) of subsection (d) of Section 1414 of Title 20 of the United States Code, the following shall apply to special education programs for individuals with exceptional needs who transfer from an educational agency located outside the State of California to a district within California. In the case of an individual with exceptional needs who transfers from district to district within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents, until the local educational agency conducts an assessment pursuant to paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code, if determined to be necessary by the local educational agency, and develops a new individualized education program, if appropriate, that is consistent with federal and state law.

(b)(1) To facilitate the transition for an individual with exceptional needs described in subdivision (a), the new school in which the individual with exceptional needs enrolls shall take reasonable steps to promptly obtain the pupil's records, including the individualized education program and supporting documents and any other records relating to the provision of special education and related services to the pupil, from the previous school in which the pupil was enrolled, pursuant to paragraph (2) of subsection (a) of Section 99.31 of Title 34 of the Code of Federal Regulations.

(2) The previous school in which the individual with exceptional needs was enrolled shall take reasonable steps to promptly respond to the request from the new school.

(c) * * * If whenever a pupil described in subdivision (a) was placed and residing in a residential nonpublic, nonsectarian school, prior to transferring to a district in another special education local plan area, and this placement is not eligible for funding pursuant to Section 56836.16, the special education local plan area that contains the

district that made the residential nonpublic, nonsectarian school placement * * * is responsible for the funding of the placement, including related services, for the remainder of the school year. An extended year session is included in the school year in which the session ends. This subdivision also applies to special education and related services required under Section 7573 of the Government Code for an individual with exceptional needs who was placed in a residential placement by an expanded individualized education program team, pursuant to Section 7572.5 of the Government Code, if the parent of the individual moves during the course of the year to a district in another special education local plan area.

(Added by Stats.1980, c. 797, p. 2431, § 9, eff. July 28, 1980. Amended by Stats.1985, c. 795, § 7; Stats.1990, c. 1234 (A.B.3880), § 5; Stats.1997, c. 854 (A.B.602), § 27; Stats.1998, c. 89 (A.B.598), § 35, eff. June 30, 1998, operative July 1, 1998; Stats.2005, c. 653 (A.B.1662), § 21, eff. Oct. 7, 2005.)

§ 56326. Referrals for further assessment and recommendations

A pupil may be referred, as appropriate, for further assessment and recommendations to the California Schools for the Deaf or Blind or the Diagnostic Centers.

(Added by Stats.1980, c. 797, p. 2432, § 9, eff. July 28, 1980. Amended by Stats.1992, c. 759 (A.B.1248), § 30, eff. Sept. 21, 1992.)

SUNSET

Sunset of special education programs, see Education Code § 62000 et seq.

§ 56327. Results; reports

The personnel who assess the pupil shall prepare a written report, or reports, as appropriate, of the results of each assessment. The report shall include, but not be limited to, all the following:

(a) Whether the pupil may need special education and related services.

(b) The basis for making the determination.

(c) The relevant behavior noted during the observation of the pupil in an appropriate setting.

(d) The relationship of that behavior to the pupil's academic and social functioning.

(e) The educationally relevant health and development, and medical findings, if any.

(f) For pupils with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services.

(g) A determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate.

(h) The need for specialized services, materials, and equipment for pupils with low incidence disabilities, consistent with guidelines established pursuant to Section 56136.

(Added by Stats.1980, c. 797, p. 2432, § 9, eff. July 28, 1980. Amended by Stats.1980, c. 1353, p. 4829, § 54, eff. Sept. 30, 1980; Stats.1982, c. 1334, p. 4948, § 4.)

SUNSET

Sunset of special education programs, see Education Code § 62000 et seq.

§ 56328. School site level and regional level service; utilization

Notwithstanding the provisions of this chapter, a district, special education local plan area, or county office may utilize a school site level and a regional level service, as provided for under Section 56336.2 as it read immediately prior to the operative date of this section, to provide the services required by this chapter.

(Added by Stats.1980, c. 797, p. 2432, § 9, eff. July 28, 1980. Amended by Stats.1987, c. 1452, § 476.)

SUNSET

Sunset of special education programs, see Education Code § 62000 et seq.

§ 56329. Notice to parents or guardians; independent educational assessments; hearings; proposals for publicly financed nonpublic placements

As part of the assessment plan given to parents or guardians pursuant to Section 56321, the parent or guardian of the pupil shall be provided with a written notice that shall include all of the following information:

(a)(1) Upon completion of the administration of tests and other assessment materials, an individualized education program team meeting, including the parent or guardian and his or her representatives, shall be scheduled, pursuant to Section 56341, to determine whether the pupil is an individual with exceptional needs as defined in Section 56026, and to discuss the assessment, the educational recommendations, and the reasons for these recommendations.

(2) In making a determination of eligibility under paragraph (1), a pupil shall not, pursuant to paragraph (5) of subsection (b) of Section 1414 of Title 20 of the United States Code, be determined to be an individual with exceptional needs if the determinant factor for the determination is any of the following:

(A) Lack of appropriate instruction in reading, including the essential components of reading instruction as defined in paragraph (3) of Section 6368 of Title 20 of the United States Code.

(B) Lack of instruction in mathematics.

(C) Limited–English proficiency.

(3) A copy of the assessment report and the documentation of determination of eligibility shall be given to the parent or guardian.

(b) A parent or guardian has the right to obtain, at public expense, an independent educational assessment of the pupil from qualified specialists, as defined by regulations of the board, if the parent or guardian disagrees with an assessment obtained by the public education agency, in accordance with Section 300.502 of Title 34 of the Code of Federal Regulations. If a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in–class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.

(c) The public education agency may initiate a due process hearing pursuant to Chapter 5 (commencing with Section 56500) to show that its assessment is appropriate. If the final decision resulting from the due process hearing is that the assessment is appropriate, the parent or guardian * * * maintains the right for an independent educational assessment, but not at public expense.

If the parent or guardian obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the public education agency with respect to the provision of free * * * appropriate public education to the child, and may be presented as evidence at a due process hearing pursuant to Chapter 5 (commencing with Section 56500) regarding the child. If a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in–class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.

(d) If a parent or guardian proposes a publicly financed placement of the pupil in a nonpublic school, the public education agency shall have an opportunity to observe the proposed placement and the pupil in the proposed placement, if the pupil has already been unilaterally

placed in the nonpublic school by the parent or guardian. Any observation conducted pursuant to this subdivision shall only be of the pupil who is the subject of the observation and may not include the observation or assessment of any other pupil in the proposed placement. The observation or assessment by a public education agency of a pupil other than the pupil who is the subject of the observation pursuant to this subdivision may be conducted, if at all, only with the consent of the parent or guardian pursuant to this article. The results of any observation or assessment of any other pupil in violation of this subdivision shall be inadmissible in any due process or judicial proceeding regarding the free appropriate public education of that other pupil.

(Added by Stats.1980, c. 797, p. 2432, § 9, eff. July 28, 1980. Amended by Stats.1982, c. 1201, p. 4354, § 18, eff. Sept. 22, 1982; Stats.1998, c. 691 (S.B.1686), § 27; Stats.2002, c. 492 (A.B.1859), § 23; Stats.2003, c. 368 (S.B.145), § 1; Stats.2005, c. 653 (A.B.1662), § 22, eff. Oct. 7, 2005.)

§ 56330. Interpretation of assessment data; conformance with federal regulations

Each district, special education local plan area, or county office of education shall follow the procedures in Section 300.535 of Title 34 of the Code of Federal Regulations when interpreting assessment data for the purpose of determining if a child is an individual with exceptional needs under Section 56026.

(Added by Stats.2002, c. 492 (A.B.1859), § 24.)

SUNSET

Sunset of special education programs, see Education Code § 62000 et seq.

§ 56331. Referral of pupil to community mental health service

(a) A pupil who is suspected of needing mental health services may be referred to a community mental health service in accordance with Section 7576 of the Government Code.

(b) Prior to referring a pupil to a county mental health agency for services, the local educational agency shall follow the procedures set forth in Section 56320 and conduct an assessment in accordance with Sections 300.530 to 300.536, inclusive, of Title 34 of the Code of Federal Regulations. If an individual with exceptional needs is identified as potentially requiring mental health services, the local educational agency shall request the participation of the county mental health agency in the individualized education program. A local educational agency shall provide any specially–designed instruction required by an individualized education program, including related services such as counseling services, parent counseling and training, psychological services, or social work services in schools as defined in Section 300.24 of Title 34 of the Code of Federal Regulations. If the individualized education program of an individual with exceptional needs includes a functional behavioral assessment and behavior intervention plan, in accordance with Section 300.520 of Title 34 of the Code of Federal Regulations, the local educational agency shall provide documentation upon referral to a county mental health agency. Local educational agencies shall provide related services, by qualified personnel, as defined by Section 300.23 of Title 34 of the Code of Federal Regulations, unless the individualized education program team designates a more appropriate agency for the provision of services. Local educational agencies and community mental health services shall work collaboratively to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed.

(Added by Stats.2004, c. 493 (S.B.1895), § 2, eff. Sept. 13, 2004.)

SUNSET

Sunset of special education programs, see Education Code §§ 62000 et seq.

Part 33 INSTRUCTIONAL MATERIALS AND TESTING

Chapter 2 ELEMENTARY SCHOOL MATERIALS

Article 2 DUTIES OF PUBLISHERS AND MANUFACTURERS

§ 60227. Followup adoptions; notice to publishers and manufacturers; specifications in notice; fee; legislative intent; definitions

(a) For purposes of this section, a followup adoption is any adoption other than the primary adoption that occurs within a six– or eight–year cycle established pursuant to subdivision (b) of Section 60200.

(b) Before conducting a followup adoption in a given subject, the department shall provide notice, pursuant to subdivision (c), to all publishers or manufacturers known to produce basic instructional materials in that subject, post an appropriate notice on the department's Internet site, and take other reasonable measures to ensure that appropriate notice is widely circulated to potentially interested publishers and manufacturers.

(c) The notice shall specify that each publisher or manufacturer choosing to participate in the followup adoption shall be assessed a fee based upon the number of programs the publisher or manufacturer indicates will be submitted for review and the number of grade levels proposed to be covered by each program.

(d) The fee shall offset the cost of conducting the followup adoption process and shall reflect the department's best estimate of the cost. The department shall take reasonable steps to limit costs of the followup adoption and to keep the fee modest, recognizing that some of the work necessary for the primary adoption need not be duplicated.

(e) The department, prior to incurring substantial costs for the followup adoption, shall require that a publisher or manufacturer who wishes to participate in the followup adoption first declare the intent to submit one or more specific programs for the followup adoption and specify the specific grade levels to be covered by each program. After a publisher or manufacturer has declared the intent to submit one or more programs and the grade levels to be covered by each program, a fee shall be assessed by the department. The fee shall be payable by the publisher or manufacturer even if the publisher subsequently chooses to withdraw a program or reduce the number of grade levels covered. A submission by a publisher or manufacturer may not be reviewed for purposes of adoption, either in a followup adoption or in any other primary or followup adoption conducted thereafter, until the fee assessed has been paid in full.

(f)(1) It is the intent of the Legislature that the fee not be so substantial that it prevents small publishers or manufacturers from participating in a followup adoption.

(2) Upon the request of a small publisher or manufacturer, the State Board of Education may reduce the fee for participation in the followup adoption.

(3) For purposes of this section, "small publisher" and "small manufacturer" mean an independently owned or operated publisher or manufacturer who is not dominant in its field of operation, and who, together with its affiliates, has 100 or fewer employees, and has average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years.

(g) Notwithstanding subdivision (b) of Section 60200, if the department determines that there is little or no interest in participating in a followup adoption by publishers and manufacturers, it shall recommend to the State Board of Education that the followup adoption not be conducted, and the State Board of Education may chose not to conduct the followup adoption.

(h) Notwithstanding Section 13340 of the Government Code, revenue derived from fees charged pursuant to subdivision (c) is

hereby continuously appropriated and available to the department from year to year until expended. Revenue derived from fees charged pursuant to subdivision (c) may be used to pay costs associated with any followup adoption and any costs associated with the review of instructional materials.

(i) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

(Added by Stats.2003, c. 806 (S.B.1058), § 1.)

REPEAL

For repeal of this section, see its terms.

ELECTIONS CODE — VOTERS

ELECTIONS CODE

Transitional Provisions

For transitional provisions, see Elections Code § 2, and Stats.1994, c. 920 (S.B.1547), § 3.

Tables

Disposition of former code sections in the Elections Code and derivation of Elections Code from former code sections, see tables at the beginning of each volume of the Elections code. (For electronic publications, see Refs and Annos (References, Annotations, or Tables).)

Division 2 VOTERS

Transitional Provisions

For transitional provisions, see Elections Code § 2, and Stats.1994, c. 920 (S.B.1547), § 3.

Chapter 3 CANCELLATION AND VOTER FILE MAINTENANCE

Article 1 GENERAL PROVISIONS

§ 2200. Permanent registration

The registration of a voter is permanent for all purposes during his or her life, unless and until the affidavit of registration is canceled by the county elections official for any of the causes specified in this article.

(Stats.1994, c. 920 (S.B.1547), § 2.)

§ 2201. Grounds for cancellation

The county elections official shall cancel the registration in the following cases:

(a) At the signed, written request of the person registered.

(b) When the mental incompetency of the person registered is legally established as provided in Sections 2208, 2209, 2210, and 2211.

(c) Upon proof that the person is presently imprisoned or on parole for conviction of a felony.

(d) Upon the production of a certified copy of a judgment directing the cancellation to be made.

(e) Upon the death of the person registered.

(f) Pursuant to Article 2 (commencing with Section 2220).

(g) Upon official notification that the voter is registered to vote in another county or state.

(h) Upon proof that the person is otherwise ineligible to vote.

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.1995, c. 896 (S.B.379), § 1; Stats.1996, c. 1123 (A.B.1714), § 8.)

§ 2202. Uncanceled affidavits of registration; requirements for maintenance, recordation, and disposal

(a) The county elections official shall preserve all uncanceled affidavits of registration in a secure manner that will protect the confidentiality of the voter information consistent with Section 2194.

The affidavits of registration shall constitute the register required to be kept by Article 5 (commencing with Section 2180) of Chapter 2.

(b) In lieu of maintaining uncanceled affidavits of registration, the county elections official may, following the first general election after the date of registration, microfilm, record on optical disc, or record on any other electronic medium that does not permit additions, deletions, or changes to the original document, the uncanceled affidavits of registration. Any such use of an electronic medium to record uncanceled affidavits shall protect the security and confidentiality of the voter information. The county elections official may dispose of any uncanceled affidavits of registration transferred pursuant to this section. The disposal of any uncanceled affidavits shall be performed in a manner that does not compromise the security or confidentiality of the voter information contained therein. Any medium utilized by the county elections official shall meet the minimum standards, guidelines, or both, as recommended by the American National Standards Institute * * * or the Association of Information and Image Management. For purposes of this section, a duplicate copy of an affidavit of registration shall be deemed an original.

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.2005, c. 726 (S.B.1016), § 8.)

§ 2203. Manner of cancellation; correction of indexes

(a) Cancellation is made by writing or stamping on the affidavit of registration the word "canceled," the reason the affidavit was canceled, and the date of cancellation.

(b) Whenever a voter transfers his or her registration from one precinct to another precinct in the same county, or reregisters in another precinct in the same county as shown by the new affidavit of registration, the county elections official shall immediately cancel the affidavit of registration from the precinct in which the voter was first registered, and shall remove the affidavit from the file of uncanceled affidavits.

(c) Except as provided in Section 2119, whenever a voter removes from one county to another county and registers in the latter county, the county elections official of the county in which he or she was first registered, upon being informed of his or her removal either by the voter personally or by receipt of a notice of reregistration under Section 2118, shall likewise cancel his or her registration and remove the affidavit of registration in that county.

(d) The county elections official in distributing to each precinct the three indexes of registration, as required by Section 2189, shall cross out of those indexes the names of all voters whose affidavits of registration from the precinct have been canceled.

(Stats.1994, c. 920 (S.B.1547), § 2.)

§ 2204. Change of residence within same precinct; change of affidavit upon notice

Notwithstanding any other provision of law, whenever a voter changes his or her residence within the same precinct, the voter's affidavit of registration shall not be cancelled. Whenever notified by the voter, the elections official shall change the voter's affidavit of registration to reflect the new residence address within the same precinct.

(Stats.1994, c. 920 (S.B.1547), § 2.)

§ 2205. Notification of deaths; cancellation of affidavit of registration

The local registrar of births and deaths shall notify the county elections official not later than the 15th day of each month of all deceased persons 18 years of age and over, whose deaths were registered with him or her or of whose deaths he or she was notified by the state registrar of vital statistics during the preceding month. This notification shall include at least the name, sex, age, birthplace, birthdate, place of residence, date and place of death of each decedent.

The county elections official shall cancel the affidavit of registration of each deceased voter.

(Stats.1994, c. 920 (S.B.1547), § 2.)

§ 2206. Death statistics; availability

The Secretary of State shall adopt regulations to facilitate the availability of death statistics from the State Department of Health Services. The data shall be used by county elections officials in canceling the affidavit of registration of deceased persons.

(Stats.1994, c. 920 (S.B.1547), § 2.)

§ 2208. Mentally incompetent persons; disqualification from voting; order

(a) A person shall be deemed mentally incompetent, and therefore disqualified from voting, if, during the course of any of the proceedings set forth below, the court finds that the person is not capable of completing an affidavit of voter registration in accordance with Section 2150 and any of the following apply:

(1) A conservator for the person or the person and estate is appointed pursuant to Division 4 (commencing with Section 1400) of the Probate Code.

(2) A conservator for the person or the person and estate is appointed pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.

(3) A conservator is appointed for the person pursuant to proceedings initiated under Section 5352.5 of the Welfare and Institutions Code, the person has been found not competent to stand trial, and the person's trial or judgment has been suspended pursuant to Section 1370 of the Penal Code.

(4) A person has plead not guilty by reason of insanity, has been found to be not guilty pursuant to Section 1026 of the Penal Code, and is deemed to be gravely disabled at the time of judgment as defined in paragraph (2) of subdivision (h) of Section 5008 of the Welfare and Institutions Code.

(b) If the proceeding under the Welfare and Institutions Code is heard by a jury, the jury shall unanimously find that the person is not capable of completing an affidavit of voter registration before the person shall be disqualified from voting.

(c) Whenever an order establishing a conservatorship is made and in connection with the order it is found that the person is not capable of completing an affidavit of voter registration, the court shall forward the order and determination to the county elections official of the person's county of residence.

(Stats.1994, c. 920 (S.B.1547), § 2.)

§ 2209. Mentally incompetent persons; review under Probate Code of capability to complete affidavit; findings by investigator; hearing

(a) For conservatorships established pursuant to Division 4 (commencing with Section 1400) of the Probate Code, the court investigator shall, during the yearly or biennial review of the conservatorship as required by Chapter 2 (commencing with Section 1850) of Part 3 of Division 4 of the Probate Code, review the person's capability of completing an affidavit of voter registration in accordance with Section 2150.

(b) If the person had been disqualified from voting by reason of being incapable of completing an affidavit of voter registration, the court investigator shall determine whether the person has become capable of completing the affidavit, and, the investigator shall so inform the court.

If the investigator finds that the person is capable of completing the affidavit, the court shall hold a hearing to determine whether the person is in fact capable of completing the affidavit. If the person is found to be capable of completing the affidavit, the person's right to register to vote shall be restored and the court shall so notify the county elections official.

(c) If the person had not been found to be incapable of completing an affidavit of voter registration, and, the court investigator determines that the person is no longer capable of completing the affidavit, the investigator shall so notify the court. The court shall hold a hearing to determine whether the person is capable of completing an affidavit of voter registration, and, if the court determines that the person is not so able, the court shall order the person to be disqualified from voting and the court will so notify the county elections official.

(Stats.1994, c. 920 (S.B.1547), § 2.)

§ 2210. Mentally incompetent persons; contest under Welfare and Institutions Code of disqualification from voting; restoration of right to vote; notice

(a) If the person or the person and estate is under a conservatorship established pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code, the person may contest his or her disqualification from voting pursuant to the procedure set forth in Section 5358.3 of the Welfare and Institutions Code.

(b) When the conservatorship described in subdivision (a) terminates after one year, the person's right to register to vote shall also be automatically restored and notification to the appropriate county elections official shall be made. If a petition is filed for the reappointment of the conservator, a new determination shall be made as to whether the person should be disqualified from voting.

(c) If the right to vote is restored pursuant to Section 5358.3 of the Welfare and Institutions Code or if the conservatorship is terminated in a proceeding held pursuant to Section 5364 of the Welfare and Institutions Code, the court shall notify the county elections official of the person's county of residence that the person's right to register to vote is restored.

(Stats.1994, c. 920 (S.B.1547), § 2.)

§ 2211. Mentally incompetent person; determination under Penal or Welfare and Institutions Code provisions; disqualification from voting or registering to vote during period of confinement in facility; notice; release from treatment facility

(a) Any person who (1) has plead not guilty by reason of insanity and who has been found to be not guilty pursuant to Section 1026 of the Penal Code, (2) has been found incompetent to stand trial and whose trial or judgment has been suspended pursuant to Section 1370 of the Penal Code, (3) has been convicted of a felony and who was judicially determined to be a mentally disordered sex offender pursuant to former Section 6300 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981, or (4) has been convicted of a felony and is being treated at a state hospital pursuant to Section 2684 of the Penal Code shall be disqualified from voting or registering to vote during that time that the person is involuntarily confined, pursuant to a court order, in a public or private facility.

(b) Upon the order of commitment to a treatment facility referred to in subdivision (a), the court shall notify the elections official of the county of residence of the person and order the person to be disqualified from voting or registering to vote.

(c) If the person is later released from the public or private treatment facility, the court shall notify the county elections official of the county of residence of the person that the right of the person to register to vote is restored.

(Stats.1994, c. 920 (S.B.1547), § 2.)

§ 2212. Statement of persons convicted of felonies; cancellation of affidavits of registration for those imprisoned or on parole

The clerk of the superior court of each county, on the basis of the records of the court, shall furnish to the chief elections official of the county, not less frequently than the first day of April and the first day of September of each year, a statement showing the names, addresses, and dates of birth of all persons who have been convicted of felonies since the clerk's last report. The elections official shall, during the first week of April and the first week of September in each year, cancel the affidavits of registration of those persons who are currently imprisoned or on parole for the conviction of a felony. The clerk shall certify the statement under the seal of the court.

(Stats.1994, c. 920 (S.B.1547), § 2. Amended by Stats.2002, c. 784 (S.B.1316), § 95.)

§ 2213. Action to compel cancellation of registration; joinder of defendants

Any person may proceed by action in the superior court to compel the county elections official to cancel any registration made illegally or which should be canceled by reason of facts that have occurred subsequent to the registration. If the voter whose registration is sought to be canceled is not a party to the action, the court may order him or her to be made a party defendant.

The county elections official and as many persons against whom there are causes of action may be joined as defendants.

(Stats.1994, c. 920 (S.B.1547), § 2.)

EVIDENCE CODE

Division 8 PRIVILEGES

Chapter 4 PARTICULAR PRIVILEGES

Article 6 PHYSICIAN–PATIENT PRIVILEGE

§ 990. Physician

As used in this article, "physician" means a person authorized, or reasonably believed by the patient to be authorized, to practice medicine in any state or nation.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 991. Patient

As used in this article, "patient" means a person who consults a physician or submits to an examination by a physician for the purpose of securing a diagnosis or preventive, palliative, or curative treatment of his physical or mental or emotional condition.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 992. Confidential communication between patient and physician

As used in this article, "confidential communication between patient and physician" means information, including information obtained by an examination of the patient, transmitted between a patient and his physician in the course of that relationship and in confidence by a means which, so far as the patient is aware, discloses the information to no third persons other than those who are present to further the interest of the patient in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the physician is consulted, and includes a diagnosis made and the advice given by the physician in the course of that relationship.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats.1967, c. 650, p. 2006, § 4.)

§ 993. Holder of the privilege

As used in this article, "holder of the privilege" means:

(a) The patient when he has no guardian or conservator.

(b) A guardian or conservator of the patient when the patient has a guardian or conservator.

(c) The personal representative of the patient if the patient is dead.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 994. Physician–patient privilege

Subject to Section 912 and except as otherwise provided in this article, the patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and physician if the privilege is claimed by:

(a) The holder of the privilege;

(b) A person who is authorized to claim the privilege by the holder of the privilege; or

(c) The person who was the physician at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

The relationship of a physician and patient shall exist between a medical or podiatry corporation as defined in the Medical Practice Act and the patient to whom it renders professional services, as well as between such patients and licensed physicians and surgeons employed by such corporation to render services to such patients. The word "persons" as used in this subdivision includes partnerships, corporations, limited liability companies, associations, and other groups and entities.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats.1968, c. 1375, p. 2696, § 3; Stats.1980, c. 1313, p. 4532, § 12; Stats.1994, c. 1010 (S.B.2053), § 105.)

§ 995. When physician required to claim privilege

The physician who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 994.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 996. Patient–litigant exception

There is no privilege under this article as to a communication relevant to an issue concerning the condition of the patient if such issue has been tendered by:

(a) The patient;

(b) Any party claiming through or under the patient;

(c) Any party claiming as a beneficiary of the patient through a contract to which the patient is or was a party; or

(d) The plaintiff in an action brought under Section 376 or 377 of the Code of Civil Procedure for damages for the injury or death of the patient.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 997. Exception: crime or tort

There is no privilege under this article if the services of the physician were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a tort or to escape detection or apprehension after the commission of a crime or a tort.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 998. Criminal proceeding

There is no privilege under this article in a criminal proceeding.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 999. Communication relating to patient condition in proceeding to recover damages; good cause

There is no privilege under this article as to a communication relevant to an issue concerning the condition of the patient in a proceeding to recover damages on account of the conduct of the patient if good cause for disclosure of the communication is shown.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats.1975, c. 318, p. 764, § 1.)

§ 1000. Parties claiming through deceased patient

There is no privilege under this article as to a communication relevant to an issue between parties all of whom claim through a deceased patient, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1001. Breach of duty arising out of physician–patient relationship

There is no privilege under this article as to a communication relevant to an issue of breach, by the physician or by the patient, of a duty arising out of the physician–patient relationship.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1002. Intention of deceased patient concerning writing affecting property interest

There is no privilege under this article as to a communication relevant to an issue concerning the intention of a patient, now deceased, with respect to a deed of conveyance, will, or other writing,

executed by the patient, purporting to affect an interest in property.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1003. Validity of writing affecting property interest

There is no privilege under this article as to a communication relevant to an issue concerning the validity of a deed of conveyance, will, or other writing, executed by a patient, now deceased, purporting to affect an interest in property.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1004. Commitment or similar proceeding

There is no privilege under this article in a proceeding to commit the patient or otherwise place him or his property, or both, under the control of another because of his alleged mental or physical condition.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1005. Proceeding to establish competence

There is no privilege under this article in a proceeding brought by or on behalf of the patient to establish his competence.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1006. Required report

There is no privilege under this article as to information that the physician or the patient is required to report to a public employee, or as to information required to be recorded in a public office, if such report or record is open to public inspection.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1007. Proceeding to terminate right, license or privilege

There is no privilege under this article in a proceeding brought by a public entity to determine whether a right, authority, license, or privilege (including the right or privilege to be employed by the public entity or to hold a public office) should be revoked, suspended, terminated, limited, or conditioned.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Article 7 PSYCHOTHERAPIST–PATIENT PRIVILEGE

§ 1010. Psychotherapist

As used in this article, "psychotherapist" means a person who is, or is reasonably believed by the patient to be:

(a) A person authorized to practice medicine in any state or nation who devotes, or is reasonably believed by the patient to devote, a substantial portion of his or her time to the practice of psychiatry.

(b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(c) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code, when he or she is engaged in applied psychotherapy of a nonmedical nature.

(d) A person who is serving as a school psychologist and holds a credential authorizing that service issued by the state.

(e) A person licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(f) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code, or a person registered as a marriage and family therapist intern who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(g) A person registered as an associate clinical social worker who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist as required by Section 4996.20 or 4996.21 of the Business and Professions Code.

(h) A person exempt from the Psychology Licensing Law pursuant to subdivision (d) of Section 2909 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.

(i) A psychological intern as defined in Section 2911 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.

(j) A trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, who is fulfilling his or her supervised practicum required by subdivision (b) of Section 4980.40 of the Business and Professions Code and is supervised by a licensed psychologist, board certified psychiatrist, a licensed clinical social worker, or a licensed marriage and family therapist.

(k) A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric–mental health nursing and is listed as a psychiatric–mental health nurse by the Board of Registered Nursing.

(*l*) An advanced practice registered nurse who is certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code and who participates in expert clinical practice in the specialty of psychiatric–mental health nursing.

(m) A person rendering mental health treatment or counseling services as authorized pursuant to Section 6924 of the Family Code.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats.1967, c. 1677, p. 4211, § 3; Stats.1970, c. 1396, p. 2624, § 1.5; Stats.1970, c. 1397, p. 2626, § 1.5; Stats.1972, c. 888, p. 1584, § 1; Stats.1974, c. 546, p. 1359, § 16; Stats.1983, c. 928, § 8; Stats.1987, c. 724, § 1; Stats.1988, c. 488, § 1; Stats.1989, c. 1104, § 37; Stats.1990, c. 662 (A.B.3613), § 1; Stats.1992, c. 308 (A.B.3035), § 2; Stats.1994, c. 1270 (A.B.2659), § 1; Stats.2001, c. 142 (S.B.716), § 1; Stats.2001, c. 420 (A.B.1253), § 1, eff. Oct. 2, 2001; Stats.2001, c. 420 (A.B.1253), § 1.5, eff. Oct. 2, 2001, operative Jan. 1, 2002.)

§ 1010.5. Privileged communication between patient and educational psychologist

A communication between a patient and an educational psychologist, licensed under Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code, shall be privileged to the same extent, and subject to the same limitations, as a communication between a patient and a psychotherapist described in subdivisions (c), (d), and (e) of Section 1010.
(Added by Stats.1985, c. 545, § 1.)

§ 1011. Patient

As used in this article, "patient" means a person who consults a psychotherapist or submits to an examination by a psychotherapist for the purpose of securing a diagnosis or preventive, palliative, or curative treatment of his mental or emotional condition or who submits to an examination of his mental or emotional condition for the purpose of scientific research on mental or emotional problems.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1012. Confidential communication between patient and psychotherapist

As used in this article, "confidential communication between patient and psychotherapist" means information, including information obtained by an examination of the patient, transmitted between a patient and his psychotherapist in the course of that relationship and in confidence by a means which, so far as the patient is aware, discloses the information to no third persons other than those who are present to further the interest of the patient in the consultation, or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the psychotherapist is consulted, and includes a diagnosis

made and the advice given by the psychotherapist in the course of that relationship.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats.1967, c. 650, p. 2006, § 5; Stats.1970, c. 1396, p. 2625, § 2; Stats.1970, c. 1397, p. 2627, § 2.)

§ 1013. Holder of the privilege

As used in this article, "holder of the privilege" means:

(a) The patient when he has no guardian or conservator.

(b) A guardian or conservator of the patient when the patient has a guardian or conservator.

(c) The personal representative of the patient if the patient is dead.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1014. Psychotherapist–patient privilege; application to individuals and entities

Subject to Section 912 and except as otherwise provided in this article, the patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and psychotherapist if the privilege is claimed by:

(a) The holder of the privilege.

(b) A person who is authorized to claim the privilege by the holder of the privilege.

(c) The person who was the psychotherapist at the time of the confidential communication, but the person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

The relationship of a psychotherapist and patient shall exist between a psychological corporation as defined in Article 9 (commencing with Section 2995) of Chapter 6.6 of Division 2 of the Business and Professions Code, a marriage and family therapy corporation as defined in Article 6 (commencing with Section 4987.5) of Chapter 13 of Division 2 of the Business and Professions Code, or a licensed clinical social workers corporation as defined in Article 5 (commencing with Section 4998) of Chapter 14 of Division 2 of the Business and Professions Code, and the patient to whom it renders professional services, as well as between those patients and psychotherapists employed by those corporations to render services to those patients. The word "persons" as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats.1969, c. 1436, p. 2943, § 1; Stats.1972, c. 1286, p. 2569, § 6; Stats.1989, c. 1104, § 38; Stats.1990, c. 605 (S.B.2245), § 1; Stats.1994, c. 1010 (S.B.2053), § 106; Stats.2002, c. 1013 (S.B.2026), § 78.)

§ 1015. When psychotherapist required to claim privilege

The psychotherapist who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 1014.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1016. Exception: Patient–litigant exception

There is no privilege under this article as to a communication relevant to an issue concerning the mental or emotional condition of the patient if such issue has been tendered by:

(a) The patient;

(b) Any party claiming through or under the patient;

(c) Any party claiming as a beneficiary of the patient through a contract to which the patient is or was a party; or

(d) The plaintiff in an action brought under Section 376 or 377 of the Code of Civil Procedure for damages for the injury or death of the patient.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1017. Exception: Psychotherapist appointed by court or board of prison terms

(a) There is no privilege under this article if the psychotherapist is appointed by order of a court to examine the patient, but this exception does not apply where the psychotherapist is appointed by order of the court upon the request of the lawyer for the defendant in a criminal proceeding in order to provide the lawyer with information needed so that he or she may advise the defendant whether to enter or withdraw a plea based on insanity or to present a defense based on his or her mental or emotional condition.

(b) There is no privilege under this article if the psychotherapist is appointed by the Board of Prison Terms to examine a patient pursuant to the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967. Amended by Stats.1967, c. 650, p. 2007, § 6; Stats.1987, c. 687, § 1.)

§ 1018. Exception: Crime or tort

There is no privilege under this article if the services of the psychotherapist were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a tort or to escape detection or apprehension after the commission of a crime or a tort.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1019. Exception: Parties claiming through deceased patient

There is no privilege under this article as to a communication relevant to an issue between parties all of whom claim through a deceased patient, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1020. Exception: Breach of duty arising out of psychotherapist–patient relationship

There is no privilege under this article as to a communication relevant to an issue of breach, by the psychotherapist or by the patient, of a duty arising out of the psychotherapist–patient relationship.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1021. Exception: Intention of deceased patient concerning writing affecting property interest

There is no privilege under this article as to a communication relevant to an issue concerning the intention of a patient, now deceased, with respect to a deed of conveyance, will, or other writing, executed by the patient, purporting to affect an interest in property.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1022. Exception: Validity of writing affecting property interest

There is no privilege under this article as to a communication relevant to an issue concerning the validity of a deed of conveyance, will, or other writing, executed by a patient, now deceased, purporting to affect an interest in property.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1023. Exception: Proceeding to determine sanity of criminal defendant

There is no privilege under this article in a proceeding under Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code initiated at the request of the defendant in a criminal action to determine his sanity.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1024. Exception: Patient dangerous to himself or others

There is no privilege under this article if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or to the person or property of another and that disclosure of the communication is necessary to prevent the threatened danger.
(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1025. Exception: Proceeding to establish competence

There is no privilege under this article in a proceeding brought by or on behalf of the patient to establish his competence.

(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1026. Exception: Required report

There is no privilege under this article as to information that the psychotherapist or the patient is required to report to a public employee or as to information required to be recorded in a public office, if such report or record is open to public inspection.

(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

§ 1027. Exception: Child under 16 victim of crime

There is no privilege under this article if all of the following circumstances exist:

(a) The patient is a child under the age of 16.

(b) The psychotherapist has reasonable cause to believe that the patient has been the victim of a crime and that disclosure of the communication is in the best interest of the child.

(Added by Stats.1970, c. 1397, p. 2627, § 3.)

FAMILY CODE

Division 11 MINORS

Part 4 MEDICAL TREATMENT

Chapter 3 CONSENT BY MINOR

§ 6924. Mental health treatment or counseling services; involvement of parents or guardians; liability of parents or guardians

(a) As used in this section:

(1) "Mental health treatment or counseling services" means the provision of mental health treatment or counseling on an outpatient basis by any of the following:

(A) A governmental agency.

(B) A person or agency having a contract with a governmental agency to provide the services.

(C) An agency that receives funding from community united funds.

(D) A runaway house or crisis resolution center.

(E) A professional person, as defined in paragraph (2).

(2) "Professional person" means any of the following:

(A) A person designated as a mental health professional in Sections 622 to 626, inclusive, of Article 8 of Subchapter 3 of Chapter 1 of Title 9 of the California Code of Regulations.

(B) A marriage and family therapist as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(C) A licensed educational psychologist as defined in Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code.

(D) A credentialed school psychologist as described in Section 49424 of the Education Code.

(E) A clinical psychologist as defined in Section 1316.5 of the Health and Safety Code.

(F) The chief administrator of an agency referred to in paragraph (1) or (3).

(G) A marriage and family therapist registered intern, as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, while working under the supervision of a licensed professional specified in subdivision (f) of Section 4980.40 of the Business and Professions Code.

(3) "Residential shelter services" means any of the following:

(A) The provision of residential and other support services to minors on a temporary or emergency basis in a facility that services only minors by a governmental agency, a person or agency having a contract with a governmental agency to provide these services, an agency that receives funding from community funds, or a licensed community care facility or crisis resolution center.

(B) The provision of other support services on a temporary or emergency basis by any professional person as defined in paragraph (2).

(b) A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if both of the following requirements are satisfied:

(1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services.

(2) The minor (A) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse.

(c) A professional person offering residential shelter services, whether as an individual or as a representative of an entity specified in paragraph (3) of subdivision (a), shall make his or her best efforts to notify the parent or guardian of the provision of services.

(d) The mental health treatment or counseling of a minor authorized by this section shall include involvement of the minor's parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate. The professional person who is treating or counseling the minor shall state in the client record whether and when the person attempted to contact the minor's parent or guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the minor's parent or guardian.

(e) The minor's parents or guardian are not liable for payment for mental health treatment or counseling services provided pursuant to this section unless the parent or guardian participates in the mental health treatment or counseling, and then only for services rendered with the participation of the parent or guardian. The minor's parents or guardian are not liable for payment for any residential shelter services provided pursuant to this section unless the parent or guardian consented to the provision of those services.

(f) This section does not authorize a minor to receive convulsive therapy or psychosurgery as defined in subdivisions (f) and (g) of Section 5325 of the Welfare and Institutions Code, or psychotropic drugs without the consent of the minor's parent or guardian.

(Stats.1992, c. 162 (A.B.2650), § 10, operative Jan. 1, 1994. Amended by Stats.1993, c. 219 (A.B.1500), § 155; Stats.2000, c. 519 (A.B.2161), § 1.)

Division 12 PARENT AND CHILD RELATIONSHIP

Part 4 FREEDOM FROM PARENTAL CUSTODY AND CONTROL

Chapter 2 CIRCUMSTANCES WHERE PROCEEDING MAY BE BROUGHT

§ 7826. Parent declared developmentally disabled or mentally ill; right to action

A proceeding under this part may be brought where both of the following requirements are satisfied:

(a) The child is one whose parent or parents have been declared by a court of competent jurisdiction, wherever situated, to be developmentally disabled or mentally ill.

(b) In the state or country in which the parent or parents reside or are hospitalized, the Director of Mental Health or the Director of Developmental Services, or their equivalent, if any, and the superintendent of the hospital, if any, of which the parent or parents are inmates or patients, certify that the parent or parents so declared to be developmentally disabled or mentally ill will not be capable of supporting or controlling the child in a proper manner.

(Stats.1992, c. 162 (A.B.2650), § 10, operative Jan. 1, 1994.)

Part 5 INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

§ 7911.1. Out–of–state placements; investigation authority; inspections; assessment and placement recommendations; denial, suspension or discontinuance of certification

(a) Notwithstanding any other provision of law, the State Department of Social Services or its designee shall investigate any threat to the health and safety of children placed by a California county social services agency or probation department in an out–of–state group home pursuant to the provisions of the Interstate Compact on the Placement of Children. This authority shall include the authority to interview children or staff in private or review their file at the out–of–state facility or wherever the child or files may be at the time of the investigation. Notwithstanding any other provisions of law, the State Department of Social Services or its designee shall require certified out–of–state group homes to comply with the reporting requirements applicable to group homes licensed in California pursuant to Title 22 of the California Code of Regulations for each child in care regardless of whether he or she is a California placement, by submitting a copy of the required reports to the Compact Administrator within regulatory timeframes. The Compact Administrator within one business day of receiving a serious events report shall verbally notify the appropriate placement agencies and within five working days of receiving a written report from the out–of–state group home, forward a copy of the written report to the appropriate placement agencies.

(b) Any contract, memorandum of understanding, or agreement entered into pursuant to paragraph (b) of Article 5 of the Interstate Compact on the Placement of Children regarding the placement of a child out of state by a California county social services agency or probation department shall include the language set forth in subdivision (a).

(c) The State Department of Social Services or its designee shall perform initial and continuing inspection of out–of–state group homes in order to either certify that the out–of–state group home meets all licensure standards required of group homes operated in California or that the department has granted a waiver to a specific licensing standard upon a finding that there exists no adverse impact to health and safety. Any failure by an out–of–state group home facility to make children or staff available as required by subdivision (a) for a private interview or make files available for review shall be grounds to deny or discontinue the certification. The State Department of Social Services shall grant or deny an initial certification or a waiver under this subdivision to an out–of–state group home facility that has more than six California children placed by a county social services agency or probation department by August 19, 1999. The department shall grant or deny an initial certification or a waiver under this subdivision to an out–of–state group home facility that has six or fewer California children placed by a county social services agency or probation department by February 19, 2000. Certifications made pursuant to this subdivision shall be reviewed annually.

(d) Within six months of the effective date of this section, a county shall be required to obtain an assessment and placement recommendation by a county multidisciplinary team for each child in an out–of–state group home facility. On or after March 1, 1999, a county shall be required to obtain an assessment and placement recommendation by a county multidisciplinary team prior to placement of a child in an out–of–state group home facility.

(e) Any failure by an out–of–state group home to obtain or maintain its certification as required by subdivision (c) shall preclude the use of any public funds, whether county, state, or federal, in the payment for the placement of any child in that out–of–state group home, pursuant to the Interstate Compact on the Placement of Children.

(f)(1) A multidisciplinary team shall consist of participating members from county social services, county mental health, county probation, county superintendents of schools, and other members as determined by the county.

(2) Participants shall have knowledge or experience in the prevention, identification, and treatment of child abuse and neglect cases, and shall be qualified to recommend a broad range of services related to child abuse or neglect.

(g)(1) The department may deny, suspend, or discontinue the certification of the out–of–state group home if the department makes a finding that the group home is not operating in compliance with the requirements of subdivision (c).

(2) Any judicial proceeding to contest the department's determination as to the status of the out–of–state group home certificate shall be held in California pursuant to Section 1085 of the Code of Civil Procedure.

(h) This section shall not impact placements made pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code relating to seriously emotionally disturbed children.

(i) Only an out–of–state group home authorized by the Compact Administrator to receive state funds for the placement by a county social services agency or probation department of any child in that out–of–state group home from the effective date of this section shall be eligible for public funds pending the department's certification under this section.

(Added by Stats.1998, c. 311 (S.B.933), § 10, eff. Aug. 19, 1998. Amended by Stats.1999, c. 881 (A.B.1659), § 2, eff. Oct. 10, 1999.)

FAMILY CODE — ADOPTION

Division 13 ADOPTION

Part 1 DEFINITIONS

§ 8545. Special–needs child

"Special–needs child" means a child whose adoption without financial assistance would be unlikely because of adverse parental background, ethnic background, race, color, language, membership in a sibling group that should remain intact, mental, physical, medical, or emotional handicaps, or age of three years or more.

(Stats.1992, c. 162 (A.B.2650), § 10, operative Jan. 1, 1994.)

Part 2 ADOPTION OF UNMARRIED MINORS

Chapter 6 VACATION OF ADOPTION

§ 9100. Developmental disability or mental illness prior to adoption; setting aside decree or order of adoption; petition; limitation of action; notification of department

(a) If a child adopted pursuant to the law of this state shows evidence of a developmental disability or mental illness as a result of conditions existing before the adoption to an extent that the child cannot be relinquished to an adoption agency on the grounds that the child is considered unadoptable, and of which conditions the adoptive parents or parent had no knowledge or notice before the entry of the order of adoption, a petition setting forth those facts may be filed by the adoptive parents or parent with the court that granted the adoption petition. If these facts are proved to the satisfaction of the court, it may make an order setting aside the order of adoption.

(b) The petition shall be filed within five years after the entry of the order of adoption.

(c) The court clerk shall immediately notify the department at Sacramento of the petition. Within 60 days after the notice, the department shall file a full report with the court and shall appear before the court for the purpose of representing the adopted child.

(Stats.1992, c. 162 (A.B.2650), § 10, operative Jan. 1, 1994.)

GOVERNMENT CODE — PUBLIC OFFICERS AND EMPLOYEES

GOVERNMENT CODE

Title 1 GENERAL

Division 4 PUBLIC OFFICERS AND EMPLOYEES

Chapter 1 GENERAL

Article 2 DISQUALIFICATION FOR OFFICE OR EMPLOYMENT

§ 1031. Public officers or employees having powers of peace officers; minimum standards

Each class of public officers or employees declared by law to be peace officers shall meet all of the following minimum standards:

(a) Be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship, except as provided in Section 2267 of the Vehicle Code.

(b) Be at least 18 years of age.

(c) Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose a criminal record.

(d) Be of good moral character, as determined by a thorough background investigation.

(e) Be a high school graduate, pass the General Education Development Test indicating high school graduation level, pass the California High School Proficiency Examination, or have attained a two–year or four–year degree from an accredited college or university. The high school shall be either a United States public school meeting the high school standards set by the state in which it is located, an accredited United States Department of Defense high school, or an accredited nonpublic high school. Any accreditation required by this paragraph shall be from an accrediting association recognized by the Secretary of the United States Department of Education. This subdivision shall not apply to a public officer or employee who was employed, prior to the effective date of the amendment of this section made at the 1971 Regular Session of the Legislature, in any position declared by law prior to the effective date of that amendment to be peace officer positions.

(f) Be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer.

(1) Physical condition shall be evaluated by a licensed physician and surgeon.

(2) Emotional and mental condition shall be evaluated by either of the following:

(A) A physician and surgeon who holds a valid California license to practice medicine, has successfully completed a postgraduate medical residency education program in psychiatry accredited by the Accreditation Council for Graduate Medical Education, and has at least the equivalent of five full–time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full–time years accrued after completion of the psychiatric residency program.

(B) A psychologist licensed by the California Board of Psychology who has at least the equivalent of five full–time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full–time years accrued postdoctorate.

The physician and surgeon or psychologist shall also have met any applicable education and training procedures set forth by the California Commission on Peace Officer Standards and Training designed for the conduct of preemployment psychological screening of peace officers.

(g) This section shall not be construed to preclude the adoption of additional or higher standards, including age.

(h) This section shall become operative on January 1, 2005.

(Added by Stats.2003, c. 777 (A.B.1669), § 4, operative Jan. 1, 2005.)

GOVERNMENT CODE — MISCELLANEOUS

Division 7 MISCELLANEOUS

Chapter 26.5 INTERAGENCY RESPONSIBILITIES FOR PROVIDING SERVICES TO CHILDREN WITH DISABILITIES

§ 7570. Maximum utilization of resources

Ensuring maximum utilization of all state and federal resources available to provide a child with a disability, as defined in paragraph (3) of Section 1401 of Title 20 of the United States Code, with a free appropriate public education, the provision of related services, as defined in paragraph (22) of Section 1401 of Title 20 of the United States Code, and designated instruction and services, as defined in Section 56363 of the Education Code, to a child with a disability, shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare. The Superintendent of Public Instruction shall ensure that this chapter is carried out through monitoring and supervision.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986. Amended by Stats.1992, c. 759 (A.B.1248), § 70, eff. Sept. 19, 1992; Stats.1998, c. 691 (S.B.1686), § 50.)

§ 7571. Assumption of responsibilities; department and county agencies to be designated

The Secretary of Health and Welfare may designate a department of state government to assume the responsibilities described in Section 7570. The secretary, or his or her designee, shall also designate a single agency in each county to coordinate the service responsibilities described in Section 7572.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986.)

§ 7572. Assessments; provision of related services or designated instruction and services

(a) A child shall be assessed in all areas related to the suspected disability by those qualified to make a determination of the child's need for the service before any action is taken with respect to the provision of related services or designated instruction and services to a child, including, but not limited to, services in the areas of, occupational therapy, physical therapy, psychotherapy, and other

mental health assessments. All assessments required or conducted pursuant to this section shall be governed by the assessment procedures contained in Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of the Education Code.

(b) Occupational therapy and physical therapy assessments shall be conducted by qualified medical personnel as specified in regulations developed by the State Department of Health Services in consultation with the State Department of Education.

(c) Psychotherapy and other mental health assessments shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, pursuant to this chapter.

(d) A related service or designated instruction and service shall only be added to the child's individualized education program by the individualized education program team, as described in Part 30 (commencing with Section 56000) of the Education Code, if a formal assessment has been conducted pursuant to this section, and a qualified person conducting the assessment recommended the service in order for the child to benefit from special education. In no case shall the inclusion of necessary related services in a pupil's individualized education plan be contingent upon identifying the funding source. Nothing in this section shall prevent a parent from obtaining an independent assessment in accordance with subdivision (b) of Section 56329 of the Education Code, which shall be considered by the individualized education program team.

(1) Whenever an assessment has been conducted pursuant to subdivision (b) or (c), the recommendation of the person who conducted the assessment shall be reviewed and discussed with the parent and with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. When the proposed recommendation of the person has been discussed with the parent and there is disagreement on the recommendation pertaining to the related service, the parent shall be notified in writing and may require the person who conducted the assessment to attend the individualized education program team meeting to discuss the recommendation. The person who conducted the assessment shall attend the individualized education program team meeting if requested. Following this discussion and review, the recommendation of the person who conducted the assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local educational agency.

(2) If an independent assessment for the provision of related services or designated instruction and services is submitted to the individualized education program team, review of that assessment shall be conducted by the person specified in subdivisions (b) and (c). The recommendation of the person who reviewed the independent assessment shall be reviewed and discussed with the parent and with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. The parent shall be notified in writing and may request the person who reviewed the independent assessment to attend the individualized education program team meeting to discuss the recommendation. The person who reviewed the independent assessment shall attend the individualized education program team meeting if requested. Following this review and discussion, the recommendation of the person who reviewed the independent assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local agency.

(3) Any disputes between the parent and team members representing the public agencies regarding a recommendation made in accordance with paragraphs (1) and (2) shall be resolved pursuant to Chapter 5 (commencing with Section 56500) of Part 30 of the Education Code.

(e) Whenever a related service or designated instruction and service specified in subdivision (b) or (c) is to be considered for inclusion in the child's individualized educational program, the local education agency shall invite the responsible public agency representative to meet with the individualized education program team to determine the need for the service and participate in developing the individualized education program. If the responsible public agency representative cannot meet with the individualized education program team, then the representative shall provide written information concerning the need for the service pursuant to subdivision (d). Conference calls, together with written recommendations, are acceptable forms of participation. If the responsible public agency representative will not be available to participate in the individualized education program meeting, the local educational agency shall ensure that a qualified substitute is available to explain and interpret the evaluation pursuant to subdivision (d) of Section 56341 of the Education Code. A copy of the information shall be provided by the responsible public agency to the parents or any adult pupil for whom no guardian or conservator has been appointed.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986. Amended by Stats.1985, c. 1274, § 1, eff. Sept. 30, 1985; Stats.1992, c. 759 (A.B.1248), § 71, eff. Sept. 21, 1992.)

§ 7572.5. Seriously emotionally disturbed child; expanded individualized education program team; individualized education program

(a) When an assessment is conducted pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of the Education Code, which determines that a child is seriously emotionally disturbed, as defined in Section 300.7 of Title 34 of the Code of Federal Regulations, and any member of the individualized education program team recommends residential placement based on relevant assessment information, the individualized education program team shall be expanded to include a representative of the county mental health department.

(b) The expanded individualized education program team shall review the assessment and determine whether:

(1) The child's needs can reasonably be met through any combination of nonresidential services, preventing the need for out–of–home care.

(2) Residential care is necessary for the child to benefit from educational services.

(3) Residential services are available which address the needs identified in the assessment and which will ameliorate the conditions leading to the seriously emotionally disturbed designation.

(c) If the review required in subdivision (b) results in an individualized education program which calls for residential placement, the individualized education program shall include all the items outlined in Section 56345 of the Education Code, and shall also include:

(1) Designation of the county mental health department as lead case manager. Lead case management responsibility may be delegated to the county welfare department by agreement between the county welfare department and the designated mental health department. The mental health department shall retain financial responsibility for provision of case management services.

(2) Provision for a review of the case progress, the continuing need for out–of–home placement, the extent of compliance with the individualized education program, and progress toward alleviating the need for out–of–home care, by the full individualized education program team at least every six months.

(3) Identification of an appropriate residential facility for placement with the assistance of the county welfare department as necessary.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986. Amended by Stats.1985, c. 1274, § 2, eff. Sept. 30, 1985; Stats.2005, c. 677 (S.B.512), § 48, eff. Oct. 7, 2005.)

§ 7572.55. Seriously emotionally disturbed child with a disability; out–of–state residential placement

(a) Residential placements for a child with a disability who is seriously emotionally disturbed may be made out–of–state only after in–state alternatives have been considered and are found not to meet the child's needs and only when the requirements of Section 7572.5, and subdivision (e) of Section 56365 of the Education Code have been met. The local education agency shall document the alternatives to out–of–state residential placement that were considered and the reasons why they were rejected.

(b) Out–of–state placements shall be made only in a privately operated school certified by the California Department of Education.

(c) A plan shall be developed for using less restrictive alternatives and in–state alternatives as soon as they become available, unless it is in the best educational interest of the child to remain in the out–of–state school. If the child is a ward or dependent of the court, this plan shall be documented in the record.

(Added by Stats.1994, c. 1128 (A.B.1892), § 1.)

§ 7573. Special education and related services

The Superintendent of Public Instruction shall ensure that local education agencies provide special education and those related services and designated instruction and services contained in a child's individualized education program that are necessary for the child to benefit educationally from his or her instructional program. Local education agencies shall be responsible only for the provision of those services which are provided by qualified personnel whose employment standards are covered by the Education Code and implementing regulations.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986.)

§ 7575. Occupational therapy and physical therapy

(a)(1) Notwithstanding any other provision of law, the State Department of Health Services, or any designated local agency administering the California Children's Services, shall be responsible for the provision of medically necessary occupational therapy and physical therapy, as specified by Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, by reason of medical diagnosis and when contained in the child's individualized education program.

(2) Related services or designated instruction and services not deemed to be medically necessary by the State Department of Health Services, that the individualized education program team determines are necessary in order to assist a child to benefit from special education, shall be provided by the local education agency by qualified personnel whose employment standards are covered by the Education Code and implementing regulations.

(b) The department shall determine whether a California Children's Services eligible pupil, or a pupil with a private medical referral needs medically necessary occupational therapy or physical therapy. A medical referral shall be based on a written report from a licensed physician and surgeon who has examined the pupil. The written report shall include the following:

(1) The diagnosed neuromuscular, musculoskeletal, or physical disabling condition prompting the referral.

(2) The referring physician's treatment goals and objectives.

(3) The basis for determining the recommended treatment goals and objectives, including how these will ameliorate or improve the pupil's diagnosed condition.

(4) The relationship of the medical disability to the pupil's need for special education and related services.

(5) Relevant medical records.

(c) The department shall provide the service directly or by contracting with another public agency, qualified individual, or a state–certified nonpublic nonsectarian school or agency.

(d) Local education agencies shall provide necessary space and equipment for the provision of occupational therapy and physical therapy in the most efficient and effective manner.

(e) The department shall also be responsible for providing the services of a home health aide when the local education agency considers a less restrictive placement from home to school for a pupil for whom both of the following conditions exist:

(1) The California Medical Assistance Program provides a life–supporting medical service via a home health agency during the time in which the pupil would be in school or traveling between school and home.

(2) The medical service provided requires that the pupil receive the personal assistance or attention of a nurse, home health aide, parent or guardian, or some other specially trained adult in order to be effectively delivered.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986. Amended by Stats.1985, c. 1274, § 4, eff. Sept. 30, 1985; Stats.1992, c. 759 (A.B.1248), § 72, eff. Sept. 21, 1992; Stats.1996, c. 1023 (S.B.1497), § 82, eff. Sept. 29, 1996.)

§ 7576. Mental health services; local educational agencies; individualized education programs; referrals; costs incurred prior to approval of individualized education program

(a) The State Department of Mental Health, or any community mental health service, as defined in Section 5602 of the Welfare and Institutions Code, designated by the State Department of Mental Health, are responsible for the provision of mental health services, as defined in regulations by the State Department of Mental Health, developed in consultation with the State Department of Education, if required in the individualized education program of a pupil. A local educational agency is not required to place a pupil in a more restrictive educational environment in order for the pupil to receive the mental health services specified in his or her individualized education program if the mental health services can be appropriately provided in a less restrictive setting. It is the intent of the Legislature that the local educational agency and the community mental health service vigorously attempt to develop a mutually satisfactory placement that is acceptable to the parent and addresses the educational and mental health treatment needs of the pupil in a manner that is cost–effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. For purposes of this section, " parent" is as defined in Section 56028 of the Education Code.

(b) A local educational agency, individualized education program team, or parent may initiate a referral for assessment of the social and emotional status of a pupil, pursuant to Section 56320 of the Education Code. Based on the results of assessments completed pursuant to Section 56320 of the Education Code, an individualized education program team may refer a pupil who has been determined to be an individual with exceptional needs as defined in Section 56026 of the Education Code and who is suspected of needing mental health services to a community mental health service if the pupil meets all of the criteria in paragraphs (1) to (5), inclusive. Referral packages shall include all documentation required in subdivision (c), and shall be provided immediately to the community mental health service.

(1) The pupil has been assessed by school personnel in accordance with Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of the Education Code. Local educational agencies and community mental health services shall work collaboratively to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed.

(2) The local educational agency has obtained written parental consent for the referral of the pupil to the community mental health service, for the release and exchange of all relevant information

between the local educational agency and the community mental health service, and for the observation of the pupil by mental health professionals in an educational setting.

(3) The pupil has emotional or behavioral characteristics that are all of the following:

(A) Are observed by qualified educational staff in educational and other settings, as appropriate.

(B) Impede the pupil from benefiting from educational services.

(C) Are significant as indicated by their rate of occurrence and intensity.

(D) Are associated with a condition that cannot be described solely as a social maladjustment or a temporary adjustment problem, and cannot be resolved with short–term counseling.

(4) As determined using educational assessments, the pupil's functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services.

(5) The local educational agency, pursuant to Section 56331 of the Education Code, has provided appropriate counseling and guidance services, psychological services, parent counseling and training, or social work services to the pupil pursuant to Section 56363 of the Education Code, or behavioral intervention as specified in Section 56520 of the Education Code, as specified in the individualized education program and the individualized education program team has determined that the services do not meet the educational needs of the pupil, or, in cases where these services are clearly inadequate or inappropriate to meet the educational needs of the pupil, the individualized education program team has documented which of these services were considered and why they were determined to be inadequate or inappropriate.

(c) If referring a pupil to a community mental health service in accordance with subdivision (b), the local educational agency or the individualized education program team shall provide the following documentation:

(1) Copies of the current individualized education program, all current assessment reports completed by school personnel in all areas of suspected disabilities pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of the Education Code, and other relevant information, including reports completed by other agencies.

(2) A copy of the parent's consent obtained as provided in paragraph (2) of subdivision (b).

(3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria set forth in paragraphs (3) and (4) of subdivision (b).

(4) A description of the counseling, psychological, and guidance services, and other interventions that have been provided to the pupil, as provided in the individualized education program of the pupil, including the initiation, duration, and frequency of these services, or an explanation of the reasons a service was considered for the pupil and determined to be inadequate or inappropriate to meet his or her educational needs.

(d) Based on preliminary results of assessments performed pursuant to Section 56320 of the Education Code, a local educational agency may refer a pupil who has been determined to be, or is suspected of being, an individual with exceptional needs, and is suspected of needing mental health services, to a community mental health service if a pupil meets the criteria in paragraphs (1) and (2). Referral packages shall include all documentation required in subdivision (e) and shall be provided immediately to the community mental health service.

(1) The pupil meets the criteria in paragraphs (2) to (4), inclusive, of subdivision (b).

(2) Counseling and guidance services, psychological services, parent counseling and training, social work services, and behavioral or other interventions as provided in the individualized education program of the pupil are clearly inadequate or inappropriate in meeting his or her educational needs.

(e) If referring a pupil to a community mental health service in accordance with subdivision (d), the local educational agency shall provide the following documentation:

(1) Results of preliminary assessments to the extent they are available and other relevant information including reports completed by other agencies.

(2) A copy of the parent's consent obtained as provided in paragraph (2) of subdivision (b).

(3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria in paragraphs (3) and (4) of subdivision (b).

(4) Documentation that appropriate related educational and designated instruction and services have been provided in accordance with Sections 300.24 and 300.26 of Title 34 of the Code of Federal Regulations.

(5) An explanation as to the reasons that counseling and guidance services, psychological services, parent counseling and training, social work services, and behavioral or other interventions as provided in the individualized education program of the pupil are clearly inadequate or inappropriate in meeting his or her educational needs.

(f) The procedures set forth in this chapter are not designed for use in responding to psychiatric emergencies or other situations requiring immediate response. In these situations, a parent may seek services from other public programs or private providers, as appropriate. This subdivision does not change the identification and referral responsibilities imposed on local educational agencies under Article 1 (commencing with Section 56300) of Chapter 4 of Part 30 of the Education Code.

(g) Referrals shall be made to the community mental health service in the county in which the pupil lives. If the pupil has been placed into residential care from another county, the community mental health service receiving the referral shall forward the referral immediately to the community mental health service of the county of origin, which shall have fiscal and programmatic responsibility for providing or arranging for provision of necessary services. In no event shall the procedures described in this subdivision delay or impede the referral and assessment process.

(h) A county mental health agency does not have fiscal or legal responsibility for any costs it incurs prior to the approval of an individualized education program, except for costs associated with conducting a mental health assessment.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986. Amended by Stats.1985, c. 1274, § 5, eff. Sept. 30, 1985; Stats.1996, c. 654 (A.B.2726), § 2; Stats.2004, c. 493 (S.B.1895), § 3, eff. Sept. 13, 2004.)

§ 7576.2. Director of State Department of Mental Health; monitoring of county mental health agencies for compliance with requirements relating to provision of mental health services to disabled pupils and appropriate utilization of funds; report to legislature; collaboration and meeting requirements

(a) The Director of the State Department of Mental Health is responsible for monitoring county mental health agencies to ensure compliance with the requirement to provide mental health services to disabled pupils pursuant to this chapter and to ensure that funds provided for this purpose are appropriately utilized.

(b) The Director of the State Department of Mental Health shall submit a report to the Legislature by April 1, 2005, that includes the following:

(1) A description of the data that is currently collected by the State Department of Mental Health related to pupils served and services provided pursuant to this chapter.

(2) A description of the existing monitoring process used by the State Department of Mental Health to ensure that county mental health agencies are complying with this chapter.

(3) Recommendations on the manner in which to strengthen and improve monitoring by the State Department of Mental Health of the compliance by a county mental health agency with the requirements of this chapter, on the manner in which to strengthen and improve collaboration and coordination with the State Department of Education in monitoring and data collection activities, and on the additional data needed related to this chapter.

(c) The Director of the State Department of Mental Health shall collaborate with the Superintendent of Public Instruction in preparing the report required pursuant to subdivision (b) and shall convene at least one meeting of appropriate stakeholders and organizations, including a representative from the State Department of Education, to obtain input on existing data collection and monitoring processes, and on ways to strengthen and improve the data collected and monitoring performed.

(Added by Stats.2004, c. 493 (S.B.1895), § 4, eff. Sept. 13, 2004.)

§ 7576.3. Legislative intent regarding collaboration between Director of State Department of Mental Health and an entity with expertise in children's mental health for collection, analysis, and dissemination of best practices for delivery of mental health services to disabled pupils

It is the intent of the Legislature that the Director of the State Department of Mental Health collaborate with an entity with expertise in children's mental health to collect, analyze, and disseminate best practices for delivering mental health services to disabled pupils. The best practices may include, but are not limited to:

(a) Interagency agreements in urban, suburban, and rural areas that result in clear identification of responsibilities between local educational agencies and county mental health agencies and result in efficient and effective delivery of services to pupils.

(b) Procedures for developing and amending individualized education programs that include mental health services that provide flexibility to educational and mental health agencies and protect the interests of children in obtaining needed mental health needs.

(c) Procedures for creating ongoing communication between the classroom teacher of the pupil and the mental health professional who is directing the mental health program for the pupil.

(Added by Stats.2004, c. 493 (S.B.1895), § 5, eff. Sept. 13, 2004.)

§ 7576.5. Local educational agencies; authority to transfer appropriated funds

If funds are appropriated to local educational agencies to support the costs of providing services pursuant to this chapter, the local educational agencies shall transfer those funds to the community mental health services that provide services pursuant to this chapter in order to reduce the local costs of providing these services. These funds shall be used exclusively for programs operated under this chapter and are offsetting revenues in any reimbursable mandate claim relating to special education programs and services.

(Added by Stats.2003, c. 227 (A.B.1754), § 34, eff. Aug. 11, 2003.)

§ 7577. Client eligibility; assessment procedures; maintenance of services to secondary school pupils in project work ability

(a) The State Department of Rehabilitation and the State Department of Education shall jointly develop assessment procedures for determining client eligibility for State Department of Rehabilitation services for disabled pupils in secondary schools to help them make the transition from high school to work. The assessment procedures shall be distributed to local education agencies.

(b) The State Department of Rehabilitation shall maintain the current level of services to secondary school pupils in project work ability and shall seek ways to augment services with funds that may become available.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986. Amended by Stats.1992, c. 759 (A.B.1248), § 73, eff. Sept. 21, 1992.)

§ 7578. Disabled children and youth residing in state hospitals; special education programs and related services

The provision of special education programs and related services for disabled children and youth residing in state hospitals shall be ensured by the State Department of Developmental Services, the State Department of Mental Health, and the Superintendent of Public Instruction in accordance with Chapter 8 (commencing with Section 56850) of Part 30 of the Education Code.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986. Amended by Stats.1992, c. 759 (A.B.1248), § 74, eff. Sept. 21, 1992.)

§ 7579. Placement in residential facility outside child's home

(a) Prior to placing a disabled child or a child suspected of being disabled in a residential facility, outside the child's home, a court, regional center for the developmentally disabled, or public agency other than an educational agency, shall notify the administrator of the special education local plan area in which the residential facility is located. The administrator of the special education local plan area shall provide the court or other placing agency with information about the availability of an appropriate public or nonpublic, nonsectarian special education program in the special education local plan area where the residential facility is located.

(b) Notwithstanding Section 56159 of the Education Code, the involvement of the administrator of the special education local plan area in the placement discussion, pursuant to subdivision (a), shall in no way obligate a public education agency to pay for the residential costs and the cost of noneducational services for a child placed in a licensed children's institution or foster family home.

(c) It is the intent of the Legislature that this section will encourage communication between the courts and other public agencies that engage in referring children to, or placing children in, residential facilities, and representatives of local educational agencies. It is not the intent of this section to hinder the courts or public agencies in their responsibilities for placing disabled children in residential facilities when appropriate.

(d) Any public agency other than an educational agency that places a disabled child or a child suspected of being disabled in a facility out of state without the involvement of the school district, special education local plan area, or county office of education in which the parent or guardian resides, shall assume all financial responsibility for the child's residential placement, special education program, and related services in the other state unless the other state or its local agencies assume responsibility.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986. Amended by Stats.1985, c. 1274, § 6, eff. Sept. 30, 1985; Stats.1992, c. 759 (A.B.1248), § 75, eff. Sept. 21, 1992; Stats.2002, c. 585 (S.B.2012), § 3.)

§ 7579.1. Conditions of discharge for disabled children or youths with active individualized education programs

(a) Prior to the discharge of any disabled child or youth who has an active individualized education program from a public hospital, proprietary hospital, or residential medical facility pursuant to Article 5.5 (commencing with Section 56167) of Chapter 2 of Part 30 of the Education Code, a licensed children's institution or foster family home pursuant to Article 5 (commencing with Section 56155) of Chapter 2 of Part 30 of the Education Code, or a state hospital for the developmentally disabled or mentally disordered, the following shall occur:

(1) The operator of the hospital or medical facility, or the agency that placed the child in the licensed children's institution or foster

family home, shall, at least 10 days prior to the discharge of a disabled child or youth, notify in writing the local educational agency in which the special education program for the child is being provided, and the receiving special education local plan area where the child is being transferred, of the impending discharge.

(2) The operator or placing agency, as part of the written notification, shall provide the receiving special education local plan area with a copy of the child's individualized education program, the identity of the individual responsible for representing the interests of the child for educational and related services for the impending placement, and other relevant information about the child that will be useful in implementing the child's individualized education program in the receiving special education local plan area.

(b) Once the disabled child or youth has been discharged, it shall be the responsibility of the receiving local educational agency to ensure that the disabled child or youth receives an appropriate educational placement that commences without delay upon his or her discharge from the hospital, institution, facility, or foster family home in accordance with Section 56325 of the Education Code. Responsibility for the provision of special education rests with the school district of residence of the parent or guardian of the child unless the child is placed in another hospital, institution, facility, or foster family home in which case the responsibility of special education rests with the school district in which the child resides pursuant to Sections 56156.4, 56156.6, and 56167 of the Education Code.

(c) Special education local plan area directors shall document instances where the procedures in subdivision (a) are not being adhered to and report these instances to the Superintendent of Public Instruction.

(Added by Stats.1989, c. 677, § 1. Amended by Stats.1992, c. 759 (A.B.1248), § 76, eff. Sept. 21, 1992; Stats.2004, c. 896 (A.B.2525), § 67, eff. Sept. 29, 2004.)

§ 7579.2. Discharge of special education recipient to closest community to home of parent or guardian

It is the intent of the Legislature that any disabled individual who has an active individualized education program and is being discharged from a state developmental center or state hospital be discharged to the community as close as possible to the home of the individual's parent, guardian, or conservator in keeping with the individual's right to receive special education and related services in the least restrictive environment.

(Added by Stats.1993, c. 939 (A.B.2355), § 18, eff. Oct. 8, 1993.)

§ 7579.5. Surrogate parent; appointment; qualifications; liability

(a) In accordance with subparagraph (B) of paragraph (2) of subsection (b) of Section 1415 of Title 20 of the United States Code, a local educational agency shall make reasonable efforts to ensure the appointment of a surrogate parent not more than 30 days after there is a determination by the local educational agency that a child needs a surrogate parent. A local educational agency shall appoint a surrogate parent for a child in accordance with * * * Section 300.515 of Title 34 of the Code of Federal Regulations under one or more of the following circumstances:

(1)(A) The child is adjudicated a dependent or ward of the court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code upon referral of the child to the local educational agency for special education and related services, or if the child already has a valid individualized education program, (B) the court has specifically limited the right of the parent or guardian to make educational decisions for the child, and (C) the child has no responsible adult to represent him or her pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055 of the Education Code.

(2) No parent for the child can be identified.

(3) The local educational agency, after reasonable efforts, cannot discover the location of a parent.

(b) When appointing a surrogate parent, the local educational agency shall, as a first preference, select a relative caretaker, foster parent, or court–appointed special advocate, if any of these individuals exists and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the local educational agency shall select the surrogate parent of its choice. If the child is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, the local educational agency shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the child.

(c) For the purposes of this section, the surrogate parent shall serve as the child's parent and shall have the rights relative to the child's education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the Code of Federal Regulations. The surrogate parent may represent the child in matters relating to special education and related services, including the identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in all other matters relating to the provision of a free appropriate public education of the child. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter.

(d) The surrogate parent is required to meet with the child at least one time. He or she may also meet with the child on additional occasions, attend the child's individualized education program meetings, review the child's educational records, consult with persons involved in the child's education, and sign any consent relating to individualized education program purposes.

(e) As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child.

(f) The surrogate parent shall comply with federal and state law pertaining to the confidentiality of student records and information and shall use discretion in the necessary sharing of the information with appropriate persons for the purpose of furthering the interests of the child.

(g) The surrogate parent may resign from his or her appointment only after he or she gives notice to the local educational agency.

(h) The local educational agency shall terminate the appointment of a surrogate parent if (1) the person is not properly performing the duties of a surrogate parent or (2) the person has an interest that conflicts with interests of the child entrusted to his or her care.

(i) Individuals who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed as a surrogate parent. "An individual who would have a conflict of interest," for purposes of this section, means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure that the child has a free appropriate public education.

(j) Except for individuals who have a conflict of interest in representing the child, and notwithstanding any other law or regulation, individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of the State Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child.

(1) A public agency authorized to appoint a surrogate parent under this section may select a person who is an employee of a nonpublic agency that only provides noneducational care for the child and who meets the other standards of this section.

(2) A person who otherwise qualifies to be a surrogate parent under this section is not an employee of the local educational agency solely because he or she is paid by the local educational agency to serve as a surrogate parent.

(k) The surrogate parent may represent the child until (1) the child is no longer in need of special education, (2) the minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by a court to be incompetent, (3) another responsible adult is appointed to make educational decisions for the minor, or (4) the right of the parent or guardian to make educational decisions for the minor is fully restored.

(*l*) The surrogate parent and the local educational agency appointing the surrogate parent shall be held harmless by the State of California when acting in their official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious.

(m) The State Department of Education shall develop a model surrogate parent training module and manual that shall be made available to local educational agencies.

(n) Nothing in this section may be interpreted to prevent a parent or guardian of an individual with exceptional needs from designating another adult individual to represent the interests of the child for educational and related services.

(*o*) If funding for implementation of this section is provided, it may only be provided from Item 6110–161–0890 of Section 2.00 of the annual Budget Act.

(Added by Stats.1990, c. 182 (A.B.1528), § 5. Amended by Stats.1991, c. 223 (A.B.1060), § 10; Stats.1993, c. 489 (A.B.1399), § 1; Stats.2002, c. 492 (A.B.1859), § 54; Stats.2002, c. 785 (S.B.1677), § 1.5; Stats.2003, c. 62 (S.B.600), § 108; Stats.2005, c. 653 (A.B.1662), § 55, eff. Oct. 7, 2005.)

§ 7579.6. Wards of the state and unaccompanied homeless youth; appointment of surrogate parent

(a) In accordance with subparagraph (A) of paragraph (2) of subsection (b) of Section 1415 of Title 20 of the United States Code, in the case of a child who is a ward of the state, the surrogate parent described in Section 7579.5 may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of Section 7579.5.

(b) In the case of an unaccompanied homeless youth as defined in paragraph (6) of Section 725 of the federal McKinney–Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(6)), the local educational agency shall appoint a surrogate in accordance with Section 7579.5.

(Added by Stats.2005, c. 653 (A.B.1662), § 56, eff. Oct. 7, 2005.)

§ 7580. Community care facility licensing

Prior to licensing a community care facility, as defined in Section 1502 of the Health and Safety Code, in which a disabled child or youth may be placed, or prior to a modification of a community care facility's license to permit expansion of the facility, the State Department of Social Services shall consult with the administrator of the special education local plan area in order to consider the impact of licensure upon local education agencies.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986. Amended by Stats.1992, c. 759 (A.B.1248), § 77, eff. Sept. 21, 1992.)

§ 7581. Residential and noneducational costs; responsibility

The residential and noneducational costs of a child placed in a medical or residential facility by a public agency, other than a local education agency, or independently placed in a facility by the parent of the child, shall not be the responsibility of the state or local education agency, but shall be the responsibility of the placing agency or parent.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986.)

§ 7582. Assessments and therapy treatment services; exemption from financial eligibility standards

Assessments and therapy treatment services provided under programs of the State Department of Health Services or the State Department of Mental Health, or their designated local agencies, rendered to a child referred by a local education agency for an assessment or a disabled child or youth with an individualized education program, shall be exempt from financial eligibility standards and family repayment requirements for these services when rendered pursuant to this chapter.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986. Amended by Stats.1985, c. 1274, § 7, eff. Sept. 30, 1985; Stats.1992, c. 759 (A.B.1248), § 78, eff. Sept. 21, 1992.)

§ 7584. Definitions

As used in this chapter, "disabled youth," "child," or "pupil" means individuals with exceptional needs as defined in Section 56026 of the Education Code.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986. Amended by Stats.1992, c. 759 (A.B.1248), § 79, eff. Sept. 21, 1992.)

§ 7585. Failure to provide required services; written notification; resolution meeting; submission of issue to director of the office of administrative hearings; appeal; provision of services pending resolution; due process hearing; report

(a) Whenever any department or any local agency designated by that department fails to provide a related service or designated instruction and service required pursuant to Section 7575 or 7576, and specified in the child's individualized education program, the parent, adult pupil, or any local education agency referred to in this chapter, shall submit a written notification of the failure to provide the service to the Superintendent of Public Instruction or the Secretary of Health and Welfare.

(b) When either the Superintendent of Public Instruction or the Secretary of Health and Welfare receives a written notification of the failure to provide a service as specified in subdivision (a), a copy shall immediately be transmitted to the other party. The superintendent, or his or her designee, and the secretary, or his or her designee, shall meet to resolve the issue within 15 calendar days of receipt of the notification. A written copy of the meeting resolution shall be mailed to the parent, the local education agency, and affected departments, within 10 days of the meeting.

(c) If the issue cannot be resolved within 15 calendar days to the satisfaction of the superintendent and the secretary, they shall jointly submit the issue in writing to the Director of the Office of Administrative Hearings, or his or her designee, in the State Department of General Services.

(d) The Director of the Office of Administrative Hearings, or his or her designee, shall review the issue and submit his or her findings in the case to the superintendent and the secretary within 30 calendar days of receipt of the case. The decision of the Director of the Office of Administrative Hearings, or his or her designee, shall be binding on the departments and their designated agencies who are parties to the dispute.

(e) If the meeting, conducted pursuant to subdivision (b), fails to resolve the issue to the satisfaction of the parent or local education agency, either party may appeal to the Director of the Office of Administrative Hearings, whose decision shall be the final administrative determination and binding on all parties.

(f) Whenever notification is filed pursuant to subdivision (a), the pupil affected by the dispute shall be provided with the appropriate related service or designated instruction and service pending resolution of the dispute, if the pupil had been receiving the service. The Superintendent of Public Instruction and the Secretary of Health and Welfare shall ensure that funds are available for provision of the service pending resolution of the issue pursuant to subdivision (e).

(g) Nothing in this section prevents a parent or adult pupil from filing for a due process hearing under Section 7586.

(h) The contract between the State Department of Education and the Office of Administrative Hearings for conducting due process hearings shall include payment for services rendered by the Office of Administrative Hearings which are required by this section.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986. Amended by Stats.2001, c. 745 (S.B.1191), § 71, eff. Oct. 12, 2001.)

§ 7586. Procedural safeguards; hearing requests

(a) All state departments, and their designated local agencies, shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code. A due process hearing arising over a related service or designated instruction and service shall be filed with the Superintendent of Public Instruction. Resolution of all issues shall be through the due process hearing process established in Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code. The decision issued in the due process hearing shall be binding on the department having responsibility for the services in issue as prescribed by this chapter.

(b) Upon receipt of a request for a due process hearing involving an agency other than an educational agency, the Superintendent of Public Instruction shall immediately notify the state and local agencies involved by sending a copy of the request to the agencies.

(c) All hearing requests that involve multiple services that are the responsibility of more than one state department shall give rise to one hearing with all responsible state or local agencies joined as parties.

(d) No public agency, state or local, may request a due process hearing pursuant to Section 56501 of the Education Code against another public agency.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986.)

§ 7586.5. Report on implementation of this chapter

Not later than January 1, 1988, the Superintendent of Public Instruction and the Secretary of Health and Welfare shall jointly submit to the Legislature and the Governor a report on the implementation of this chapter. The report shall include, but not be limited to, information regarding the number of complaints and due process hearings resulting from this chapter.

(Added by Stats.1985, c. 1274, § 9, eff. Sept. 30, 1985, operative July 1, 1986.)

§ 7586.6. Interagency agreements to implement chapter

(a) The Superintendent of Public Instruction and the Secretary of Health and Welfare shall ensure that the State Department of Education and the State Department of Mental Health enter into an interagency agreement by January 1, 1998. It is the intent of the Legislature that the agreement include, but not be limited to, procedures for ongoing joint training, technical assistance for state and local personnel responsible for implementing this chapter, protocols for monitoring service delivery, and a system for compiling data on program operations.

(b) It is the intent of the Legislature that the designated local agencies of the State Department of Education and the State Department of Mental Health update their interagency agreements for services specified in this chapter at the earliest possible time. It is the intent of the Legislature that the state and local interagency agreements be updated at least every three years or earlier as necessary.

(Added by Stats.1996, c. 654 (A.B.2726), § 3.)

§ 7586.7. Plan for in–service training of state and local personnel

The Superintendent of Public Instruction and the Secretary of Health and Welfare shall jointly prepare and implement within existing resources a plan for in–service training of state and local personnel responsible for implementing the provisions of this chapter.

(Added by Stats.1985, c. 1274, § 10, eff. Sept. 30, 1985, operative July 1, 1986.)

§ 7587. Regulations

By January 1, 1986, each state department named in this chapter shall develop regulations, as necessary, for the department or designated local agency to implement this act. All regulations shall be reviewed by the Superintendent of Public Instruction prior to filing with the Office of Administrative Law, in order to ensure consistency with federal and state laws and regulations governing the education of disabled children. The directors of each department shall adopt all regulations pursuant to this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. For the purpose of the Administrative Procedure Act, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. These regulations shall not be subject to the review and approval of the Office of Administrative Law and shall not be subject to automatic repeal until the final regulations take effect on or before June 30, 1997, and the final regulations shall become effective immediately upon filing with the Secretary of State. Regulations adopted pursuant to this section shall be developed with the maximum feasible opportunity for public participation and comments.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986. Amended by Stats.1985, c. 107, § 1, eff. June 27, 1985; Stats.1985, c. 1274, § 11, eff. Sept. 30, 1985; Stats.1986, c. 1133, § 1, eff. Sept. 25, 1986, operative July 1, 1986; Stats.1992, c. 759 (A.B.1248), § 80, eff. Sept. 21, 1992; Stats.1996, c. 654 (A.B.2726), § 4.)

§ 7588. Operative date

This chapter shall become operative on July 1, 1986, except Section 7583, which shall become operative on January 1, 1985.

(Added by Stats.1984, c. 1747, § 2, operative July 1, 1986. Amended by Stats.1985, c. 107, § 2, eff. June 27, 1985.)

GOVERNMENT CODE — EXECUTIVE DEPARTMENT

Title 2 GOVERNMENT OF THE STATE OF CALIFORNIA

Division 3 EXECUTIVE DEPARTMENT

Part 2 CONSTITUTIONAL OFFICERS

Chapter 1 GOVERNOR

Article 2 POWERS AND DUTIES

§ 12012.30. Ratification of tribal–state gaming compact entered into in accordance with Indian Gaming Regulatory Act of 1988

The tribal–state gaming compact entered into in accordance with the Indian Gaming Regulatory Act of 1988 (18 U.S.C. Secs. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et seq.) between the State of California and the Torres–Martinez Desert Cahuilla Indians, executed on August 12, 2003, is hereby ratified.

(Added by Stats.2003, c. 802 (S.B.930), § 1. Amended by Stats.2004, c. 183 (A.B.3082), § 142.)

Title 8 THE ORGANIZATION AND GOVERNMENT OF COURTS

Chapter 2 THE JUDICIAL COUNCIL

Article 3 COORDINATED EDUCATIONAL PROGRAMS FOR THE JUDICIARY

§ 68553. Family law training

The Judicial Council shall establish judicial training programs for judges, referees, commissioners, mediators, and others as deemed appropriate who perform duties in family law matters.

The training shall include a family law session in any orientation session conducted for newly appointed or elected judges and an annual training session in family law.

The training shall include instruction in all aspects of family law, including effects of gender on family law proceedings, the economic effects of dissolution on the involved parties, and, on and after July 1, 1994, the effects of allegations of child abuse or neglect made during family law proceedings.

(Added by Stats.1987, c. 1134, § 2. Amended by Stats.1994, c. 688 (A.B.2845), § 2.)

HEALTH AND SAFETY CODE — USE OF SECLUSION AND BEHAVIORAL RESTRAINTS

HEALTH AND SAFETY CODE

Division 1.5 USE OF SECLUSION AND BEHAVIORAL RESTRAINTS IN FACILITIES

§ 1180. Reduction in use of seclusion and behavioral restraints in facilities; recommendations of California Health and Human Services Agency; training protocols and requirements; federal and private funding; staff injuries; implementation of section

(a) The California Health and Human Services Agency, in accordance with their mission, shall provide the leadership and coordination necessary to reduce the use of seclusion and behavioral restraints in facilities that are licensed, certified, or monitored by departments that fall within its jurisdiction.

(b) The agency may make recommendations to the Legislature for additional facilities, or for additional units or departments within facilities, that should be included within the requirements of this division in the future, including, but not limited to, emergency rooms.

(c) At the request of the secretary, the involved state departments shall provide information regarding existing training protocols and requirements related to the utilization of seclusion and behavioral restraints by direct care staff who work in facilities within their jurisdiction. All involved state departments shall cooperate in implementing any training protocols established pursuant to this division. It is the intent of the Legislature that training protocols developed pursuant to this division be incorporated into existing training requirements and opportunities. It is further the intent of the Legislature that, to the extent feasible, the training protocols developed pursuant to Section 1180.2 be utilized in the development of training protocols developed pursuant to Section 1180.3.

(d) The secretary, or his or her designee, is encouraged to pursue federal and private funding to support the development of a training protocol that can be incorporated into the existing training activities for direct care staff conducted by the state, facilities, and educational institutions in order to reduce the use of seclusion and behavioral restraints.

(e) The secretary or his or her designee shall make recommendations to the Legislature on how to best assess the impact of serious staff injuries sustained during the use of seclusion or behavioral restraints, on staffing costs, and on workers' compensation claims and costs.

(f) The agency shall not be required to implement this section if implementation cannot be achieved within existing resources, unless additional funding for this purpose becomes available. The agency and involved departments may incrementally implement this section in order to accomplish its goals within existing resources, through the use of federal or private funding, or upon the subsequent appropriation of funds by the Legislature for this purpose, or all of these.

(Added by Stats.2003, c. 750 (S.B.130), § 2.)

§ 1180.1. Definitions

For purposes of this division, the following definitions apply:

(a) "Behavioral restraint" means "mechanical restraint" or "physical restraint" as defined in this section, used as an intervention when a person presents an immediate danger to self or to others. It does not include restraints used for medical purposes, including, but not limited to, securing an intravenous needle or immobilizing a person for a surgical procedure, or postural restraints, or devices used to prevent injury or to improve a person's mobility and independent functioning rather than to restrict movement.

(b) "Containment" means a brief physical restraint of a person for the purpose of effectively gaining quick control of a person who is aggressive or agitated or who is a danger to self or others.

(c) "Mechanical restraint" means the use of a mechanical device, material, or equipment attached or adjacent to the person's body that he or she cannot easily remove and that restricts the freedom of movement of all or part of a person's body or restricts normal access to the person's body, and that is used as a behavioral restraint.

(d) "Physical restraint" means the use of a manual hold to restrict freedom of movement of all or part of a person's body, or to restrict normal access to the person's body, and that is used as a behavioral restraint. "Physical restraint" is any staff–to–person physical contact in which the person unwillingly participates. "Physical restraint" does not include briefly holding a person without undue force in order to calm or comfort, or physical contact intended to gently assist a person in performing tasks or to guide or assist a person from one area to another.

(e) "Seclusion" means the involuntary confinement of a person alone in a room or an area from which the person is physically prevented from leaving. "Seclusion" does not include a "timeout," as defined in regulations relating to facilities operated by the State Department of Developmental Services.

(f) "Secretary" means the Secretary of the California Health and Human Services Agency.

(g) "Serious injury" means any significant impairment of the physical condition as determined by qualified medical personnel, and includes, but is not limited to, burns, lacerations, bone fractures, substantial hematoma, or injuries to internal organs.

(Added by Stats.2003, c. 750 (S.B.130), § 2.)

§ 1180.2. Application of section to certain state hospitals; technical assistance and training; avoidance of use of seclusion and behavioral restraints; exceptions; data collection; availability to public; reports of deaths or serious injuries to persons

(a) This section shall apply to the state hospitals operated by the State Department of Mental Health and facilities operated by the State Department of Developmental Services that utilize seclusion or behavioral restraints.

(b) The State Department of Mental Health and the State Department of Developmental Services shall develop technical assistance and training programs to support the efforts of facilities described in subdivision (a) to reduce or eliminate the use of seclusion and behavioral restraints in those facilities.

(c) Technical assistance and training programs should be designed with the input of stakeholders, including clients and direct care staff, and should be based on best practices that lead to the avoidance of the use of seclusion and behavioral restraints, including, but not limited to, all of the following:

(1) Conducting an intake assessment that is consistent with facility policies and that includes issues specific to the use of seclusion and behavioral restraints as specified in Section 1180.4.

(2) Utilizing strategies to engage clients collaboratively in assessment, avoidance, and management of crisis situations in order to prevent incidents of the use of seclusion and behavioral restraints.

(3) Recognizing and responding appropriately to underlying reasons for escalating behavior.

(4) Utilizing conflict resolution, effective communication, deescalation, and client–centered problem solving strategies that diffuse and safely resolve emerging crisis situations.

(5) Individual treatment planning that identifies risk factors, positive early intervention strategies, and strategies to minimize time spent in seclusion or behavioral restraints. Individual treatment planning should include input from the person affected.

(6) While minimizing the duration of time spent in seclusion or behavioral restraints, using strategies to mitigate the emotional and physical discomfort and ensure the safety of the person involved in seclusion or behavioral restraints, including input from the person about what would alleviate his or her distress.

(7) Training in conducting an effective debriefing meeting as specified in Section 1180.5, including the appropriate persons to involve, the voluntary participation of the person who has been in seclusion or behavioral restraints, and strategic interventions to engage affected persons in the process. The training should include strategies that result in maximum participation and comfort for the involved parties to identify factors that lead to the use of seclusion and behavioral restraints and factors that would reduce the likelihood of future incidents.

(d)(1) The State Department of Mental Health and the State Department of Developmental Services shall take steps to establish a system of mandatory, consistent, timely, and publicly accessible data collection regarding the use of seclusion and behavioral restraints in facilities described in this section. It is the intent of the Legislature that data be compiled in a manner that allows for standard statistical comparison.

(2) The State Department of Mental Health and the State Department of Developmental Services shall develop a mechanism for making this information publicly available on the Internet.

(3) Data collected pursuant to this section shall include all of the following:

(A) The number of deaths that occur while persons are in seclusion or behavioral restraints, or where it is reasonable to assume that a death was proximately related to the use of seclusion or behavioral restraints.

(B) The number of serious injuries sustained by persons while in seclusion or subject to behavioral restraints.

(C) The number of serious injuries sustained by staff that occur during the use of seclusion or behavioral restraints.

(D) The number of incidents of seclusion.

(E) The number of incidents of use of behavioral restraints.

(F) The duration of time spent per incident in seclusion.

(G) The duration of time spent per incident subject to behavioral restraints.

(H) The number of times an involuntary emergency medication is used to control behavior, as defined by the State Department of Mental Health.

(e) A facility described in subdivision (a) shall report each death or serious injury of a person occurring during, or related to, the use of seclusion or behavioral restraints. This report shall be made to the agency designated in subdivision (h) of Section 4900 of the Welfare and Institutions Code no later than the close of the business day following the death or injury. The report shall include the encrypted identifier of the person involved, and the name, street address, and telephone number of the facility.

(Added by Stats.2003, c. 750 (S.B.130), § 2.)

§ 1180.3. Application of section to psychiatric units; technical assistance and training programs; avoidance of use of seclusion and behavioral restraints; publicly accessible data; Internet; uniform reporting; implementation of section

(a) This section shall apply to psychiatric units of general acute care hospitals, acute psychiatric hospitals, psychiatric health facilities, crisis stabilization units, community treatment facilities, group homes, skilled nursing facilities, intermediate care facilities, community care facilities, and mental health rehabilitation centers.

(b)(1) The secretary or his or her designee shall develop technical assistance and training programs to support the efforts of facilities to reduce or eliminate the use of seclusion and behavioral restraints in those facilities that utilize them.

(2) Technical assistance and training programs should be designed with the input of stakeholders, including clients and direct care staff, and should be based on best practices that lead to the avoidance of the use of seclusion and behavioral restraints. In order to avoid redundancies and to promote consistency across various types of facilities, it is the intent of the Legislature that the technical assistance and training program, to the extent possible, be based on that developed pursuant to Section 1180.2.

(c)(1) The secretary or his or her designee shall take steps to establish a system of mandatory, consistent, timely, and publicly accessible data collection regarding the use of seclusion and behavioral restraints in all facilities described in subdivision (a) that utilize seclusion and behavioral restraints. In determining a system of data collection, the secretary should utilize existing efforts, and direct new or ongoing efforts, of associated state departments to revise or improve their data collection systems. The secretary or his or her designee shall make recommendations for a mechanism to ensure compliance by facilities, including, but not limited to, penalties for failure to report in a timely manner. It is the intent of the Legislature that data be compiled in a manner that allows for standard statistical comparison and be maintained for each facility subject to reporting requirements for the use of seclusion and behavioral restraints.

(2) The secretary shall develop a mechanism for making this information, as it becomes available, publicly available on the Internet. For data currently being collected, this paragraph shall be implemented as soon as it reasonably can be achieved within existing resources. As new reporting requirements are developed and result in additional data becoming available, this additional data shall be included in the data publicly available on the Internet pursuant to this paragraph.

(3) At the direction of the secretary, the departments shall cooperate and share resources for developing uniform reporting for all facilities. Uniform reporting of seclusion and behavioral restraint utilization information shall, to the extent possible, be incorporated into existing reporting requirements for facilities described in subdivision (a).

(4) Data collected pursuant to this subdivision shall include all of the data described in paragraph (3) of subdivision (d) of Section 1180.2.

(5) The secretary or his or her designee shall work with the state departments that have responsibility for oversight of the use of seclusion and behavioral restraints to review and eliminate redundancies and outdated requirements in the reporting of data on the use of seclusion and behavioral restraints in order to ensure cost–effectiveness.

(d) Neither the agency nor any department shall be required to implement this section if implementation cannot be achieved within existing resources, unless additional funding for this purpose becomes available. The agency and involved departments may incrementally implement this section in order to accomplish its goals within existing resources, through the use of federal or private funding, or upon the subsequent appropriation of funds by the Legislature for this purpose, or all of these.

(Added by Stats.2003, c. 750 (S.B.130), § 2.)

§ 1180.4. Initial assessment prior to placement decisions or upon admission to facility; contents of assessment; use of restraints for emergencies; prohibited restraints; use of prone containment techniques; monitoring

(a) A facility described in subdivision (a) of Section 1180.2 or

subdivision (a) of Section 1180.3 shall conduct an initial assessment of each person prior to a placement decision or upon admission to the facility, or as soon thereafter as possible. This assessment shall include input from the person and from someone whom he or she desires to be present, such as a family member, significant other, or authorized representative designated by the person, and if the desired third party can be present at the time of admission. This assessment shall also include, based on the information available at the time of initial assessment, all of the following:

(1) A person's advance directive regarding deescalation or the use of seclusion or behavioral restraints.

(2) Identification of early warning signs, triggers, and precipitants that cause a person to escalate, and identification of the earliest precipitant of aggression for persons with a known or suspected history of aggressiveness, or persons who are currently aggressive.

(3) Techniques, methods, or tools that would help the person control his or her behavior.

(4) Preexisting medical conditions or any physical disabilities or limitations that would place the person at greater risk during restraint or seclusion.

(5) Any trauma history, including any history of sexual or physical abuse that the affected person feels is relevant.

(b) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 may use seclusion or behavioral restraints for behavioral emergencies only when a person's behavior presents an imminent danger of serious harm to self or others.

(c) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 may not use either of the following:

(1) A physical restraint or containment technique that obstructs a person's respiratory airway or impairs the person's breathing or respiratory capacity, including techniques in which a staff member places pressure on a person's back or places his or her body weight against the person's torso or back.

(2) A pillow, blanket, or other item covering the person's face as part of a physical or mechanical restraint or containment process.

(d) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 may not use physical or mechanical restraint or containment on a person who has a known medical or physical condition, and where there is reason to believe that the use would endanger the person's life or seriously exacerbate the person's medical condition.

(e)(1) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 may not use prone mechanical restraint on a person at risk for positional asphyxiation as a result of one of the following risk factors that are known to the provider:

(A) Obesity.

(B) Pregnancy.

(C) Agitated delirium or excited delirium syndromes.

(D) Cocaine, methamphetamine, or alcohol intoxication.

(E) Exposure to pepper spray.

(F) Preexisting heart disease, including, but not limited to, an enlarged heart or other cardiovascular disorders.

(G) Respiratory conditions, including emphysema, bronchitis, or asthma.

(2) Paragraph (1) shall not apply when written authorization has been provided by a physician, made to accommodate a person's stated preference for the prone position or because the physician judges other clinical risks to take precedence. The written authorization may not be a standing order, and shall be evaluated on a case–by–case basis by the physician.

(f) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 shall avoid the deliberate use of prone containment techniques whenever possible, utilizing the best practices in early intervention techniques, such as deescalation. If prone containment techniques are used in an emergency situation, a staff member shall observe the person for any signs of physical duress throughout the use of prone containment. Whenever possible, the staff member monitoring the person shall not be involved in restraining the person.

(g) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 may not place a person in a facedown position with the person's hands held or restrained behind the person's back.

(h) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 may not use physical restraint or containment as an extended procedure.

(i) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 shall keep under constant, face–to–face human observation a person who is in seclusion and in any type of behavioral restraint at the same time. Observation by means of video camera may be utilized only in facilities that are already permitted to use video monitoring under federal regulations specific to that facility.

(j) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 shall afford to persons who are restrained the least restrictive alternative and the maximum freedom of movement, while ensuring the physical safety of the person and others, and shall use the least number of restraint points.

(k) A person in a facility described in subdivision (a) of Section 1180.2 and subdivision (a) of Section 1180.3 has the right to be free from the use of seclusion and behavioral restraints of any form imposed as a means of coercion, discipline, convenience, or retaliation by staff. This right includes, but is not limited to, the right to be free from the use of a drug used in order to control behavior or to restrict the person's freedom of movement, if that drug is not a standard treatment for the person's medical or psychiatric condition. (Added by Stats.2003, c. 750 (S.B.130), § 2.)

§ 1180.5. Clinical and quality reviews for episodes of use of restraints; timing of review; debriefing; documentation

(a) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 shall conduct a clinical and quality review for each episode of the use of seclusion or behavioral restraints.

(b) A facility described in subdivision (a) of Section 1180.2 or subdivision (a) of Section 1180.3 shall, as quickly as possible but no later than 24 hours after the use of seclusion or behavioral restraints, conduct a debriefing regarding the incident with the person, and, if the person requests it, the person's family member, domestic partner, significant other, or authorized representative, if the desired third party can be present at the time of the debriefing at no cost to the facility, as well as with the staff members involved in the incident, if reasonably available, and a supervisor, to discuss how to avoid a similar incident in the future. The person's participation in the debriefing shall be voluntary. The purposes of the debriefing shall be to do all of the following:

(1) Assist the person to identify the precipitant of the incident, and suggest methods of more safely and constructively responding to the incident.

(2) Assist the staff to understand the precipitants to the incident, and to develop alternative methods of helping the person avoid or cope with those incidents.

(3) Help treatment team staff devise treatment interventions to address the root cause of the incident and its consequences, and to modify the treatment plan.

(4) Help assess whether the intervention was necessary and whether it was implemented in a manner consistent with staff training and facility policies.

(c) The facility shall, in the debriefing, provide both the person and staff the opportunity to discuss the circumstances resulting in the use of seclusion or behavioral restraints, and strategies to be used by the staff, the person, or others that could prevent the future use of seclusion or behavioral restraints.

(d) The facility staff shall document in the person's record that the debriefing session took place and any changes to the person's treatment plan that resulted from the debriefing.
(Added by Stats.2003, c. 750 (S.B.130), § 2.)

§ 1180.6. Annual report to Senate and Assembly budget committee hearings of progress made in implementation of division

The State Department of Health Services, the State Department of Mental Health, the State Department of Social Services, and the State Department of Developmental Services shall annually provide information to the Legislature, during Senate and Assembly budget committee hearings, about the progress made in implementing this division. This information shall include the progress of implementation and barriers to achieving full implementation.
(Added by Stats.2003, c. 750 (S.B.130), § 2.)

HEALTH AND SAFETY CODE — LICENSING PROVISIONS

Division 2 LICENSING PROVISIONS

Chapter 2 HEALTH FACILITIES

Article 1 GENERAL

§ 1250. Definitions

As used in this chapter, "health facility" means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24–hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24–hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital that exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital that, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital. The general acute care hospital operated by the State Department of Developmental Services at Agnews Developmental Center may, until June 30, 2007, provide surgery and anesthesia services through a contract or agreement with another acute care hospital. Notwithstanding the requirements of this subdivision, a general acute care hospital operated by the Department of Corrections and Rehabilitation or the Department of Veterans Affairs may provide surgery and anesthesia services during normal weekday working hours, and not provide these services during other hours of the weekday or on weekends or holidays, if the general acute care hospital otherwise meets the requirements of this section[1]

A "general acute care hospital" includes a "rural general acute care hospital." However, a "rural general acute care hospital" shall not be required by the department to provide surgery and anesthesia services. A " rural general acute care hospital" shall meet either of the following conditions:

(1) The hospital meets criteria for designation within peer group six or eight, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982.

(2) The hospital meets the criteria for designation within peer group five or seven, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982, and has no more than 76 acute care beds and is located in a census dwelling place of 15,000 or less population according to the 1980 federal census.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24–hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility that provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility that provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of 4 to 15 beds that provides 24–hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician and surgeon as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff that provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility that provides 24–hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled nursing" means a facility with a capacity of 4 to 15 beds that provides 24–hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician and surgeon as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i)(1) "Congregate living health facility" means a residential home with a capacity, except as provided in paragraph (4), of no more than 12 beds, that provides inpatient care, including the following basic

services: medical supervision, 24–hour skilled nursing and supportive care, pharmacy, dietary, social, recreational, and at least one type of service specified in paragraph (2). The primary need of congregate living health facility residents shall be for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities.

(2) Congregate living health facilities shall provide one of the following services:

(A) Services for persons who are mentally alert, physically disabled persons, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness, a diagnosis of a life–threatening illness, or both. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon. A "life–threatening illness" means the individual has an illness that can lead to a possibility of a termination of life within five years or less as stated in writing by his or her attending physician and surgeon.

(C) Services for persons who are catastrophically and severely disabled. A catastrophically and severely disabled person means a person whose origin of disability was acquired through trauma or nondegenerative neurologic illness, for whom it has been determined that active rehabilitation would be beneficial and to whom these services are being provided. Services offered by a congregate living health facility to a catastrophically disabled person shall include, but not be limited to, speech, physical, and occupational therapy.

(3) A congregate living health facility license shall specify which of the types of persons described in paragraph (2) to whom a facility is licensed to provide services.

(4)(A) A facility operated by a city and county for the purposes of delivering services under this section may have a capacity of 59 beds.

(B) A congregate living health facility not operated by a city and county servicing persons who are terminally ill, persons who have been diagnosed with a life–threatening illness, or both, that is located in a county with a population of 500,000 or more persons may have not more than 25 beds for the purpose of serving terminally ill persons.

(C) A congregate living health facility not operated by a city and county serving persons who are catastrophically and severely disabled, as defined in subparagraph (C) of paragraph (2) that is located in a county of 500,000 or more persons may have not more than 12 beds for the purpose of serving catastrophically and severely disabled persons.

(5) A congregate living health facility shall have a noninstitutional, homelike environment.

(j)(1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency that, as determined by the state department, provides inpatient health services to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a law enforcement facility that houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of improved access to health care, security, and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24–hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the general acute care hospitals at the California Medical Facility, the California Men's Colony, and the California Institution for Men. This subdivision shall not be construed to prohibit the * * * Department of Corrections from obtaining a correctional treatment center license at these sites.

(k) "Nursing facility" means a health facility licensed pursuant to this chapter that is certified to participate as a provider of care either as a skilled nursing facility in the federal Medicare Program under Title XVIII of the federal Social Security Act or as a nursing facility in the federal Medicaid Program under Title XIX of the federal Social Security Act, or as both.

(*l*) Regulations defining a correctional treatment center described in subdivision (j) that is operated by a county, city, or city and county, the Department of Corrections, or the Department of the Youth Authority, shall not become effective prior to, or if effective, shall be inoperative until January 1, 1996, and until that time these correctional facilities are exempt from any licensing requirements.

(Added by Stats.1973, c. 1202, p. 2564, § 2. Amended by Stats.1974, c. 1444, p. 3151, § 1; Stats.1976, c. 854, p. 1950, § 34, eff. Sept. 9, 1976; Stats.1978, c. 1221, § 1, eff. Sept. 27, 1978; Stats.1978, c. 1226, § 1.5; Stats.1980, c. 676, p. 1937, § 152; Stats.1980, c. 569, p. 1558, § 1; Stats.1981, c. 714, p. 2675, § 213; Stats.1981, c. 743, p. 2908, § 3; Stats.1983, c. 695, § 1, eff. Sept. 11, 1983; Stats.1983, c. 1003, § 1; Stats.1984, c. 497, § 2, eff. July 17, 1984; Stats.1985, c. 1496, § 4; Stats.1986, c. 1111, § 1; Stats.1986, c. 1320, § 1; Stats.1986, c. 1459, § 1.5; Stats.1987, c. 1282, § 2; Stats.1988, c. 1478, § 3, eff. Sept. 28, 1988; Stats.1988, c. 1608, § 1.3; Stats.1989, c. 1393, § 1, eff. Oct. 2, 1989; Stats.1990, c. 1227 (A.B.3413), § 1, eff. Sept. 24, 1990; Stats.1990, c. 1329 (S.B.1524), § 3.5, eff. Sept. 26, 1990; Stats.1992, c. 697 (S.B.1559), § 11; Stats.1992, c. 1163 (S.B.1570), § 1; Stats.1992, c. 1164 (S.B.1003), § 1; Stats.1992, c. 1369 (A.B.3027), § 5, eff. Oct. 27, 1992, operative Jan. 1, 1993; Stats.1993, c. 589 (A.B.2211), § 84; Stats.1993, c. 70 (S.B.86), § 7, eff. June 30, 1993; Stats.1993, c. 930 (S.B.560), § 1; Stats.1993, c. 931 (A.B.972), § 1; Stats.1993, c. 932 (S.B.910), § 1, eff. Oct. 8, 1993; Stats.1993, c. 932 (S.B.910), § 1.7, eff. Oct. 8, 1993, operative Jan. 1, 1994; Stats.1995, c. 749 (A.B.1177), § 6, eff. Oct. 10, 1995; Stats.2000, c. 451 (A.B.1731), § 2; Stats.2001, c. 685 (A.B.1212), § 1; Stats.2005, c. 333 (A.B.1346), § 2; Stats.2005, c. 443 (S.B.666), § 2.)

§ 1250.2. Psychiatric health facility as § 1250 health facility; outpatient services; medicare participation

(a) As defined in Section 1250, "health facility" includes a "psychiatric health facility," defined to mean a health facility, licensed by the State Department of Mental Health, that provides 24–hour inpatient care for mentally disordered, incompetent, or other persons described in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code. This care shall include, but not be limited to, the following basic services: psychiatry, clinical psychology, psychiatric nursing, social work, rehabilitation, drug administration, and appropriate food services for those persons whose physical health needs can be met in an affiliated hospital or in outpatient settings.

It is the intent of the Legislature that the psychiatric health facility shall provide a distinct type of service to psychiatric patients in a 24–hour acute inpatient setting. The State Department of Mental Health shall require regular utilization reviews of admission and discharge criteria and lengths of stay in order to assure that these patients are moved to less restrictive levels of care as soon as appropriate.

(b) The State Department of Mental Health may issue a special permit to a psychiatric health facility for it to provide structured outpatient services (commonly referred to as SOPS) consisting of morning, afternoon, or full daytime organized programs, not

exceeding 10 hours, for acute daytime care for patients admitted to the facility. This subdivision shall not be construed as requiring a psychiatric health facility to apply for a special permit to provide these alternative levels of care.

The Legislature recognizes that, with access to structured outpatient services, as an alternative to 24–hour inpatient care, certain patients would be provided with effective intervention and less restrictive levels of care. The Legislature further recognizes that, for certain patients, the less restrictive levels of care eliminate the need for inpatient care, enable earlier discharge from inpatient care by providing a continuum of care with effective aftercare services, or reduce or prevent the need for a subsequent readmission to inpatient care.

(c) Any reference in any statute to Section 1250 of the Health and Safety Code shall be deemed and construed to also be a reference to this section.

(d) Notwithstanding any other provision of law, and to the extent consistent with federal law, a psychiatric health facility shall be eligible to participate in the medicare program under Title XVIII of the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.), and the medicaid program under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.), if all of the following conditions are met:

(1) The facility is a licensed facility.

(2) The facility is in compliance with all related statutes and regulations enforced by the State Department of Mental Health, including regulations contained in Chapter 9 (commencing with Section 77001) of Division 5 of Title 22 of the California Code of Regulations.

(3) The facility meets the definitions and requirements contained in subdivisions (e) and (f) of Section 1861 of the federal Social Security Act (42 U.S.C. Sec. 1395x (e) and (f)), including the approval process specified in Section 1861(e)(7)(B) of the Social Security Act (42 U.S.C. Sec. 1395x(e)(7)(B)), which requires that the state agency responsible for licensing hospitals has assured that the facility meets licensing requirements.

(4) The facility meets the conditions of participation for hospitals pursuant to Part 482 of Title 42 of the Code of Federal Regulations.

(Added by Stats.1978, c. 1234, § 1. Amended by Stats.1990, c. 57 (A.B.365), § 1, eff. April 20, 1990; Stats.1991, c. 241 (A.B.404), § 1; Stats.1996, c. 245 (A.B.2616), § 1, eff. July 22, 1996; Stats.1997, c. 17 (S.B.947), § 59.)

§ 1254. Health facilities; inspection and licensing; separate license for provision of basic services; exemptions

(a) Except as provided in subdivision (e), the state department shall inspect and license health facilities. The state department shall license health facilities to provide their respective basic services specified in Section 1250. Except as provided in Section 1253, the state department shall inspect and approve a general acute care hospital to provide special services as specified in Section 1255. The state department shall develop and adopt regulations to implement the provisions contained in this section.

(b) Upon approval, the state department shall issue a separate license for the provision of the basic services enumerated in subdivision (c) or (d) of Section 1250 whenever these basic services are to be provided by an acute care hospital, as defined in subdivision (a), (b), or (f) of that section, where the services enumerated in subdivision (c) or (d) of Section 1250 are to be provided in any separate freestanding facility, whether or not the location of the separate freestanding facility is contiguous to the acute care hospital. The same requirement shall apply to any new freestanding facility constructed for the purpose of providing basic services, as defined in subdivision (c) or (d) of Section 1250, by any acute care hospital on or after January 1, 1984.

(c) (1) Those beds licensed to an acute care hospital which, prior to January 1, 1984, were separate freestanding beds and were not part of the physical structure licensed to provide acute care, and which beds were licensed to provide those services enumerated in subdivision (c) or (d) of Section 1250, are exempt from the requirements of subdivision (b).

(2) All beds licensed to an acute care hospital and located within the physical structure in which acute care is provided are exempt from the requirements of subdivision (b) irrespective of the date of original licensure of the beds, or the licensed category of the beds.

(3) All beds licensed to an acute care hospital owned and operated by the State of California or any other public agency are exempt from the requirements of subdivision (b).

(4) All beds licensed to an acute care hospital in a rural area as defined by Chapter 1010, of the Statutes of 1982, are exempt from the requirements of subdivision (b), except where there is a freestanding skilled nursing facility or intermediate care facility which has experienced an occupancy rate of 95 percent or less during the past 12 months within a 25–mile radius or which may be reached within 30 minutes using a motor vehicle.

(5) All beds licensed to an acute care hospital which meet the criteria for designation within peer group six or eight, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982, and published by the California Health Facilities Commission, and all beds in hospitals which have fewer than 76 licensed acute care beds and which are located in a census designation place of 15,000 or less population, are exempt from the requirements of subdivision (b), except where there is a free–standing skilled nursing facility or intermediate care facility which has experienced an occupancy rate of 95 percent or less during the past 12 months within a 25–mile radius or which may be reached within 30 minutes using a motor vehicle.

(6) All beds licensed to an acute care hospital which has had a certificate of need approved by a health systems agency on or before July 1, 1983, are exempt from the requirements of subdivision (b).

(7) All beds licensed to an acute care hospital are exempt from the requirements of subdivision (b), if reimbursement from the Medi–Cal program for beds licensed for the provision of services enumerated in subdivision (c) or (d) of Section 1250 and not otherwise exempt does not exceed the reimbursement which would be received if the beds were in a separately licensed facility.

(d) Except as provided in Section 1253, the state department shall inspect and approve a general acute care hospital to provide special services as specified in Section 1255. The state department shall develop and adopt regulations to implement subdivisions (a) to (d), inclusive, of this section.

(e) The State Department of Mental Health shall inspect and license psychiatric health facilities. The State Department of Mental Health shall license psychiatric health facilities to provide their basic services specified in Section 1250.2. The State Department of Mental Health shall develop and adopt regulations to implement this subdivision.

(Added by Stats.1973, c. 1202, p. 2565, § 2. Amended by Stats.1974, c. 1444, p. 3151, § 2; Stats.1978, c. 1226, § 3; Stats.1983, c. 695, § 3, eff. Sept. 11, 1983; Stats.1983, c. 1285, § 4; Stats.1984, c. 1516, § 3, eff. Sept. 28, 1984; Stats.1987, c. 1282, § 4; Stats.1990, c. 57 (A.B.365), § 2, eff. April 20, 1990.)

§ 1254.5. Eating disorders; legislative findings and declarations

(a) The Legislature finds and declares that the disease of eating disorders is not simply medical or psychiatric, but involves biological, sociological, psychological, family, medical, and spiritual components. In addition, the Legislature finds and declares that the treatment of eating disorders is multifaceted, and like the treatment of chemical dependency, does not fall neatly into either the traditional medical or psychiatric milieu.

(b) The inpatient treatment of eating disorders shall be provided only in state licensed hospitals, which may be general acute care

hospitals as defined in subdivision (a) of Section 1250, acute psychiatric hospitals as defined in subdivision (b) of Section 1250, or any other licensed health facility designated by the State Department of Health Services.

(c) "Eating disorders," for the purposes of this section, means anorexia nervosa and bulimia as defined by the 1980 Diagnostic and Statistical Manual of Mental Disorders (DSM–III) published by the American Psychiatric Association.

(Added by Stats.1987, c. 1142, § 1.)

§ 1262. Discharge of patient; distribution of written aftercare plan; components; applicable facilities

(a) When a mental health patient is being discharged from one of the facilities specified in subdivision (c), the patient and the patient's conservator, guardian, or other legally authorized representative shall be given a written aftercare plan prior to the patient's discharge from the facility. The written aftercare plan shall include, to the extent known, all of the following components:

(1) The nature of the illness and followup required.

(2) Medications including side effects and dosage schedules. If the patient was given an informed consent form with his or her medications, the form shall satisfy the requirement for information on side effects of the medications.

(3) Expected course of recovery.

(4) Recommendations regarding treatment that are relevant to the patient's care.

(5) Referrals to providers of medical and mental health services.

(6) Other relevant information.

(b) The patient shall be advised by facility personnel that he or she may designate another person to receive a copy of the aftercare plan. A copy of the aftercare plan shall be given to any person designated by the patient.

(c) Subdivision (a) applies to all of the following facilities:

(1) A state mental hospital.

(2) A general acute care hospital as described in subdivision (a) of Section 1250.

(3) An acute psychiatric hospital as described in subdivision (b) of Section 1250.

(4) A psychiatric health facility as described in Section 1250.2.

(5) A mental health rehabilitation center as described in Section 5675 of the Welfare and Institutions Code.

(6) A skilled nursing facility with a special treatment program, as described in Section 51335 and Sections 72443 to 72475, inclusive, of Title 22 of the California Code of Regulations.

(d) For purposes of this section, "mental health patient" means a person who is admitted to the facility primarily for the diagnosis or treatment of a mental disorder.

(Added by Stats.1997, c. 512 (A.B.482), § 1. Amended by Stats.1998, c. 346 (A.B.2746), § 1.)

Article 3 REGULATIONS

§ 1275. Adoption, amendment, or repeal; procedure; continuation of prior regulations; health facility physical plant standards; outpatient services in freestanding physical plants; qualifications of professionals

(a) The state department shall adopt, amend, or repeal, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13, any reasonable rules and regulations as may be necessary or proper to carry out the purposes and intent of this chapter and to enable the state department to exercise the powers and perform the duties conferred upon it by this chapter, not inconsistent with any statute of this state including, but not limited to, the State Building Standards Law, Part 2.5 (commencing with Section 18901) of Division 13.

All regulations in effect on December 31, 1973, which were adopted by the State Board of Public Health, the State Department of Public Health, the State Department of Mental Hygiene, or the State Department of Health relating to licensed health facilities shall remain in full force and effect until altered, amended, or repealed by the director or pursuant to Section 25 or other provisions of law.

(b) Notwithstanding this section or any other provision of law, the Office of Statewide Health Planning and Development shall adopt and enforce regulations prescribing building standards for the adequacy and safety of health facility physical plants.

(c) The building standards adopted by the State Fire Marshal, and the Office of Statewide Health Planning and Development pursuant to subdivision (b), for the adequacy and safety of freestanding physical plants housing outpatient services of a health facility licensed under subdivision (a) or (b) of Section 1250 shall not be more restrictive or comprehensive than the comparable building standards established, or otherwise made applicable, by the State Fire Marshal and the Office of Statewide Health Planning and Development to clinics and other facilities licensed pursuant to Chapter 1 (commencing with Section 1200).

(d) Except as provided in subdivision (f), the licensing standards adopted by the state department under subdivision (a) for outpatient services located in a freestanding physical plant of a health facility licensed under subdivision (a) or (b) of Section 1250 shall not be more restrictive or comprehensive than the comparable licensing standards applied by the state department to clinics and other facilities licensed under Chapter 1 (commencing with Section 1200).

(e) Except as provided in subdivision (f), the state agencies specified in subdivisions (c) and (d) shall not enforce any standard applicable to outpatient services located in a freestanding physical plant of a health facility licensed pursuant to subdivision (a) or (b) of Section 1250, to the extent that the standard is more restrictive or comprehensive than the comparable licensing standards applied to clinics and other facilities licensed under Chapter 1 (commencing with Section 1200).

(f) All health care professionals providing services in settings authorized by this section shall be members of the organized medical staff of the health facility to the extent medical staff membership would be required for the provision of the services within the health facility. All services shall be provided under the respective responsibilities of the governing body and medical staff of the health facility.

(g) For purposes of this section, "freestanding physical plant" means any building which is not physically attached to a building in which inpatient services are provided.

(Added by Stats.1973, c. 1202, p. 2570, § 2. Amended by Stats.1979, c. 1152, p. 4233, § 18; Stats. 1983, c. 101, § 104; Stats.1983, c. 778, § 1; Stats.1987, c. 1171, § 1; Stats.1990, c. 1051 (S.B.2323), § 1, eff. Sept. 19, 1990.)

§ 1275.1. Psychiatric health facilities; regulations; legislative findings, declarations and intent; certificates of exemption

(a) Notwithstanding any rules or regulations governing other health facilities, the regulations developed by the State Department of Mental Health for psychiatric health facilities shall prevail. The regulations applying to psychiatric health facilities shall prescribe standards of adequacy, safety, and sanitation of the physical plant, of staffing with duly qualified licensed personnel, and of services based on the needs of the persons served thereby.

(b) The regulations shall include standards appropriate for two levels of disorder:

(1) Involuntary ambulatory psychiatric patients.

(2) Voluntary ambulatory psychiatric patients.

For purposes of this subdivision, "ambulatory patients" shall include, but not be limited to, deaf, blind, and physically handicapped persons. Disoriented persons who are not bedridden or confined to a wheelchair shall also be considered as ambulatory patients.

(c) The regulations shall not require, but may permit building and services requirements for hospitals which are only applicable to physical health care needs of patients that can be met in an affiliated hospital or in outpatient settings including, but not limited to, such requirements as surgical, dietary, laboratory, laundry, central supply, radiologic, and pharmacy.

(d) The regulations shall include provisions for an "open planning" architectural concept.

(e) The regulations shall exempt from seismic requirements all structures of Type V and of one–story construction.

(f) Standards for involuntary patients shall include provisions to allow for restraint and seclusion of patients. Such standards shall provide for adequate safeguards for patient safety and protection of patient rights.

(g) The regulations shall provide for the retention by the psychiatric health facility of a consultant pharmacist, who shall supervise and review pharmaceutical services within the facility and perform such other services, including prevention of the unlawful diversion of controlled substances subject to abuse, as the state department may by regulation require. Regulations adopted pursuant to this subdivision shall take into consideration the varying bed sizes of psychiatric health facilities.

(Added by Stats.1978, c. 1234, § 3. Amended by Stats.1979, c. 887, p. 3073, § 1, eff. Sept. 22, 1979; Stats.1988, c. 1047, § 2, eff. Sept. 20, 1988.)

§ 1276.4. Health facilities; licensed nurse–to–patient ratios by licensed nurse classification; application

(a) By January 1, 2002, the State Department of Health Services shall adopt regulations that establish minimum, specific, and numerical licensed nurse–to–patient ratios by licensed nurse classification and by hospital unit for all health facilities licensed pursuant to subdivision (a), (b), or (f) of Section 1250. The department shall adopt these regulations in accordance with the department's licensing and certification regulations as stated in Sections 70053.2, 70215, and 70217 of Title 22 of the California Code of Regulations, and the professional and vocational regulations in Section 1443.5 of Title 16 of the California Code of Regulations. The department shall review these regulations five years after adoption and shall report to the Legislature regarding any proposed changes. Flexibility shall be considered by the department for rural general acute care hospitals in response to their special needs. As used in this subdivision, "hospital unit" means a critical care unit, burn unit, labor and delivery room, postanesthesia service area, emergency department, operating room, pediatric unit, step–down/intermediate care unit, specialty care unit, telemetry unit, general medical care unit, subacute care unit, and transitional inpatient care unit. The regulation addressing the emergency department shall distinguish between regularly scheduled core staff licensed nurses and additional licensed nurses required to care for critical care patients in the emergency department.

(b) These ratios shall constitute the minimum number of registered and licensed nurses that shall be allocated. Additional staff shall be assigned in accordance with a documented patient classification system for determining nursing care requirements, including the severity of the illness, the need for specialized equipment and technology, the complexity of clinical judgment needed to design, implement, and evaluate the patient care plan and the ability for self–care, and the licensure of the personnel required for care.

(c) "Critical care unit" as used in this section means a unit that is established to safeguard and protect patients whose severity of medical conditions requires continuous monitoring, and complex intervention by licensed nurses.

(d) All health facilities licensed under subdivision (a), (b), or (f) of Section 1250 shall adopt written policies and procedures for training and orientation of nursing staff.

(e) No registered nurse shall be assigned to a nursing unit or clinical area unless that nurse has first received orientation in that clinical area sufficient to provide competent care to patients in that area, and has demonstrated current competence in providing care in that area.

(f) The written policies and procedures for orientation of nursing staff shall require that all temporary personnel shall receive orientation and be subject to competency validation consistent with Sections 70016.1 and 70214 of Title 22 of the California Code of Regulations.

(g) Requests for waivers to this section that do not jeopardize the health, safety, and well–being of patients affected and that are needed for increased operational efficiency may be granted by the state department to rural general acute care hospitals meeting the criteria set forth in Section 70059.1 of Title 22 of the California Code of Regulations.

(h) In case of conflict between this section and any provision or regulation defining the scope of nursing practice, the scope of practice provisions shall control.

(i) The regulations adopted by the department shall augment and not replace existing nurse–to–patient ratios that exist in regulation or law for the intensive care units, the neonatal intensive care units, or the operating room.

(j) The regulations adopted by the department shall not replace existing licensed staff–to–patient ratios for hospitals operated by the State Department of Mental Health.

(k) The regulations adopted by the department for health facilities licensed under subdivision (b) of Section 1250 that are not operated by the State Department of Mental Health shall take into account the special needs of the patients served in the psychiatric units.

(*l*) The department may take into consideration the unique nature of the University of California teaching hospitals as educational institutions when establishing licensed nurse–to–patient ratios. The department shall coordinate with the Board of Registered Nursing to ensure that staffing ratios are consistent with the Board of Registered Nursing approved nursing education requirements. This includes nursing clinical experience incidental to a work–study program rendered in a University of California clinical facility approved by the Board of Registered Nursing provided there will be sufficient direct care registered nurse preceptors available to ensure safe patient care.

(Added by Stats.1999, c. 945 (A.B.394), § 3. Amended by Stats.2000, c. 148 (A.B.1760), § 1, eff. July 21, 2000.)

Article 6.5 RELEASE OF SEX OFFENDER TO LONG–TERM HEALTH CARE FACILITY

§ 1312. Notice required before release of sex offender to long–term health care facility

Before a person who is required to register as a sex offender under Section 290 of the Penal Code is released into a long–term health care facility, as defined in Section 1418, the Department of Corrections and Rehabilitation, the State Department of Mental Health, any or other official in charge of the place of confinement, shall notify the facility, in writing, that the sex offender is being released to reside at the facility.

(Added by Stats.2005, c. 466 (A.B.217), § 1.)

Article 7 OTHER SERVICES

§ 1316.5. Clinical psychologists; health facility rules for medical staff membership and clinical privileges; report to legislature; appointments; use of facilities

(a)(1) Each health facility owned and operated by the state offering care or services within the scope of practice of a psychologist shall establish rules and medical staff bylaws that include provisions for medical staff membership and clinical privileges for clinical psychologists within the scope of their licensure as psychologists, subject to the rules and medical staff bylaws governing medical staff membership or privileges as the facility shall establish. The rules and regulations shall not discriminate on the basis of whether the staff member holds an M.D., D.O., D. D.S., D.P.M., or doctoral degree in psychology within the scope of the member's respective licensure.

Each of these health facilities owned and operated by the state shall establish a staff comprised of physicians and surgeons, dentists, podiatrists, psychologists, or any combination thereof, that shall regulate the admission, conduct, suspension, or termination of the staff appointment of psychologists employed by the health facility.

(2) With regard to the practice of psychology in health facilities owned and operated by the state offering care or services within the scope of practice of a psychologist, medical staff status shall include and provide for the right to pursue and practice full clinical privileges for holders of a doctoral degree of psychology within the scope of their respective licensure. These rights and privileges shall be limited or restricted only upon the basis of an individual practitioner's demonstrated competence. Competence shall be determined by health facility rules and medical staff bylaws that are necessary and are applied in good faith, equally and in a nondiscriminatory manner, to all practitioners, regardless of whether they hold an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology.

(3) Nothing in this subdivision shall be construed to require a health facility owned and operated by the state to offer a specific health service or services not otherwise offered. If a health service is offered in such a health facility that includes provisions for medical staff membership and clinical privileges for clinical psychologists, the facility shall not discriminate between persons holding an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology who are authorized by law to perform the service within the scope of the person's respective licensure.

(4) The rules and medical staff bylaws of a health facility owned and operated by the state that include provisions for medical staff membership and clinical privileges for medical staff and duly licensed clinical psychologists shall not discriminate on the basis of whether the staff member holds an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology within the scope of the member's respective licensure. The health facility staff of these health facilities who process, review, evaluate, and determine qualifications for staff privileges for medical staff shall include, if possible, staff members who are clinical psychologists.

(b)(1) The rules of a health facility not owned or operated by this state may enable the appointment of clinical psychologists on the terms and conditions that the facility shall establish. In these health facilities, clinical psychologists may hold membership and serve on committees of the medical staff and carry professional responsibilities consistent with the scope of their licensure and their competence, subject to the rules of the health facility.

(2) Nothing in this subdivision shall be construed to require a health facility not owned or operated by this state to offer a specific health service or services not otherwise offered. If a health service is offered by a health facility with both licensed physicians and surgeons and clinical psychologists on the medical staff, which both licensed physicians and surgeons and clinical psychologists are authorized by law to perform, the service may be performed by either, without discrimination.

(3) This subdivision shall not prohibit a health facility that is a clinical teaching facility owned or operated by a university operating a school of medicine from requiring that a clinical psychologist have a faculty teaching appointment as a condition for eligibility for staff privileges at that facility.

(4) In any health facility that is not owned or operated by this state that provides staff privileges to clinical psychologists, the health facility staff who process, review, evaluate, and determine qualifications for staff privileges for medical staff shall include, if possible, staff members who are clinical psychologists.

(c) No classification of health facilities by the department, nor any other classification of health facilities based on quality of service or otherwise, by any person, body, or governmental agency of this state or any subdivision thereof shall be affected by a health facility's provision for use of its facilities by duly licensed clinical psychologists, nor shall any classification of these facilities be affected by the subjection of the psychologists to the rules and regulations of the organized professional staff. No classification of health facilities by any governmental agency of this state or any subdivision thereof pursuant to any law, whether enacted prior or subsequent to the effective date of this section, for the purposes of ascertaining eligibility for compensation, reimbursement, or other benefit for treatment of patients shall be affected by a health facility's provision for use of its facilities by duly licensed clinical psychologists, nor shall any classification of these facilities be affected by the subjection of the psychologists to the rules and regulations of the organized professional staff which govern the psychologists' use of the facilities.

(d) "Clinical psychologist," as used in this section, means a psychologist licensed by this state who meets both of the following requirements:

(1) Possesses an earned doctorate degree in psychology from an educational institution meeting the criteria of subdivision (b) of Section 2914 of the Business and Professions Code.

(2) Has not less than two years clinical experience in a multidisciplinary facility licensed or operated by this or another state or by the United States to provide health care, or, is listed in the latest edition of the National Register of Health Service Providers in Psychology, as adopted by the Council for the National Register of Health Service Providers in Psychology.

(e) Nothing in this section is intended to expand the scope of licensure of clinical psychologists. Notwithstanding the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code), the Public Employment Relations Board is precluded from creating any additional bargaining units for the purpose of exclusive representation of state psychologist employees that might result because of medical staff membership and/or privilege changes for psychologists due to the enactment of provisions by Assembly Bill No. 3141 of the 1995–96 Regular Session.

(f) The State Department of Mental Health, the State Department of Developmental Services, and the Department of Corrections shall report to the Legislature no later than January 1, 2006, on the impact of medical staff membership and privileges for clinical psychologists on quality of care, and on cost–effectiveness issues.

(Added by Stats.1978, c. 116, § 2. Amended by Stats.1980, c. 730, p. 2178, § 1. Amended by Stats.1996, c. 826 (A.B.3141), § 1; Stats.1998, c. 717 (A.B.947), § 1; Stats.2003, c. 230 (A.B.1762), § 4.5, eff. Aug. 11, 2003.)

Chapter 2.2 HEALTH CARE SERVICE PLANS

Article 5 STANDARDS

§ 1373. Plan contract; coverage group contract; arbitration; commencement of benefits

(a) A plan contract may not provide an exception for other coverage if the other coverage is entitlement to Medi–Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

Each plan contract shall be interpreted not to provide an exception for the Medi–Cal or medicaid benefits.

A plan contract shall not provide an exemption for enrollment because of an applicant's entitlement to Medi–Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

A plan contract may not provide that the benefits payable

thereunder are subject to reduction if the individual insured has entitlement to the Medi–Cal or medicaid benefits.

(b) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for sterilization operations or procedures shall not impose any disclaimer, restriction on, or limitation of, coverage relative to the covered individual's reason for sterilization.

As used in this section, "sterilization operations or procedures" shall have the same meaning as that specified in Section 10120 of the Insurance Code.

(c) Every plan contract that provides coverage to the spouse or dependents of the subscriber or spouse shall grant immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any subscriber or spouse covered and to each minor child placed for adoption from and after the date on which the adoptive child's birth parent or other appropriate legal authority signs a written document, including, but not limited to, a health facility minor release report, a medical authorization form, or a relinquishment form, granting the subscriber or spouse the right to control health care for the adoptive child or, absent this written document, on the date there exists evidence of the subscriber's or spouse's right to control the health care of the child placed for adoption. No plan may be entered into or amended if it contains any disclaimer, waiver, or other limitation of coverage relative to the coverage or insurability of newborn infants of, or children placed for adoption with, a subscriber or spouse covered as required by this subdivision.

(d) Every plan contract that provides that coverage of a dependent child of a subscriber shall terminate upon attainment of the limiting age for dependent children specified in the plan, shall also provide in substance that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is and continues to be both (1) incapable of self–sustaining employment by reason of mental retardation or physical handicap and (2) chiefly dependent upon the subscriber for support and maintenance, provided proof of the incapacity and dependency is furnished to the plan by the member within 31 days of the request for the information by the plan or group plan contractholder and subsequently as may be required by the plan or group plan contractholder, but not more frequently than annually after the two–year period following the child's attainment of the limiting age.

(e) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for both an employee and one or more covered persons dependent upon the employee and provides for an extension of the coverage for any period following a termination of employment of the employee shall also provide that this extension of coverage shall apply to dependents upon the same terms and conditions precedent as applied to the covered employee, for the same period of time, subject to payment of premiums, if any, as required by the terms of the policy and subject to any applicable collective bargaining agreement.

(f) A group contract shall not discriminate against handicapped persons or against groups containing handicapped persons. Nothing in this subdivision shall preclude reasonable provisions in a plan contract against liability for services or reimbursement of the handicap condition or conditions relating thereto, as may be allowed by rules of the director.

(g) Every group contract shall set forth the terms and conditions under which subscribers and enrollees may remain in the plan in the event the group ceases to exist, the group contract is terminated or an individual subscriber leaves the group, or the enrollees' eligibility status changes.

(h)(1) A health care service plan or specialized health care service plan may provide for coverage of, or for payment for, professional mental health services, or vision care services, or for the exclusion of these services. If the terms and conditions include coverage for services provided in a general acute care hospital or an acute psychiatric hospital as defined in Section 1250 and do not restrict or modify the choice of providers, the coverage shall extend to care provided by a psychiatric health facility as defined in Section 1250.2 operating pursuant to licensure by the State Department of Mental Health. A health care service plan that offers outpatient mental health services but does not cover these services in all of its group contracts shall communicate to prospective group contractholders as to the availability of outpatient coverage for the treatment of mental or nervous disorders.

(2) No plan shall prohibit the member from selecting any psychologist who is licensed pursuant to the Psychology Licensing Law (Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code), any optometrist who is the holder of a certificate issued pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code or, upon referral by a physician and surgeon licensed pursuant to the Medical Practice Act (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code), (i) any marriage and family therapist who is the holder of a license under Section 4980.50 of the Business and Professions Code, (ii) any licensed clinical social worker who is the holder of a license under Section 4996 of the Business and Professions Code, (iii) any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric–mental health nursing and is listed as a psychiatric–mental health nurse by the Board of Registered Nursing, or (iv) any advanced practice registered nurse certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric–mental health nursing, to perform the particular services covered under the terms of the plan, and the certificate holder is expressly authorized by law to perform these services.

(3) Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training and experience.

(4) For the purposes of this section, "marriage and family therapist" means a licensed marriage and family therapist who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

(5) Nothing in this section shall be construed to allow a member to select and obtain mental health or psychological or vision care services from a certificate or license holder who is not directly affiliated with or under contract to the health care service plan or specialized health care service plan to which the member belongs. All health care service plans and individual practice associations that offer mental health benefits shall make reasonable efforts to make available to their members the services of licensed psychologists. However, a failure of a plan or association to comply with the requirements of the preceding sentence shall not constitute a misdemeanor.

(6) As used in this subdivision, "individual practice association" means an entity as defined in subsection (5) of Section 1307 of the federal Public Health Service Act (42 U.S.C. Sec. 300e–1, subsec. (5)).

(7) Health care service plan coverage for professional mental health services may include community residential treatment services that are alternatives to inpatient care and that are directly affiliated with the plan or to which enrollees are referred by providers affiliated with the plan.

(i) If the plan utilizes arbitration to settle disputes, the plan contracts shall set forth the type of disputes subject to arbitration, the process to be utilized, and how it is to be initiated.

(j) A plan contract that provides benefits that accrue after a certain time of confinement in a health care facility shall specify what constitutes a day of confinement or the number of consecutive hours of confinement that are requisite to the commencement of benefits.
(Added by Stats.1975, c. 941, p. 2089, § 2, operative July 1, 1976. Amended by Stats.1976, c. 432, p. 1104, § 1; Stats.1976, c. 1185, p. 5290, § 94; Stats.1978, c. 648, § 1; Stats.1980, c. 11, p. 57, § 1; Stats.1980, c. 973, p. 3088, § 1; Stats.1980, c. 1235, p. 4193, § 2; Stats.1980, c. 1313, p. 4536, § 14.5; Stats.1981, c. 267, p. 1355, § 1, eff. Aug. 25, 1981; Stats.1982, c. 121, p. 378, § 1; Stats.1983, c. 928, § 9; Stats.1983, c. 1259, § 1.5; Stats.1984, c. 1366, § 1; Stats.1984, c. 1367, § 1.5; Stats.1987, c. 265, § 1; Stats.1989, c. 1104, § 39.) ; Stats.1990, c. 57 (A.B.365), § 8, eff. April 20, 1990; Stats.1993, c. 987 (S.B.1221), § 2; Stats.1994, c. 147 (A.B.2377), § 7, eff. July 11, 1994; Stats.1999, c. 525 (A.B.78), § 109; Stats.2001, c. 420 (A.B.1253), § 3, eff. Oct. 2, 2001; Stats.2002, c. 1013 (S.B.2026), § 84.)

Article 5.6 POINT–OF–SERVICE HEALTH CARE SERVICE PLAN CONTRACTS

§ 1374.72. Severe mental illnesses; serious emotional disturbances of children

(a) Every health care service plan contract issued, amended, or renewed on or after July 1, 2000, that provides hospital, medical, or surgical coverage shall provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses of a person of any age, and of serious emotional disturbances of a child, as specified in subdivisions (d) and (e), under the same terms and conditions applied to other medical conditions as specified in subdivision (c).

(b) These benefits shall include the following:

(1) Outpatient services.

(2) Inpatient hospital services.

(3) Partial hospital services.

(4) Prescription drugs, if the plan contract includes coverage for prescription drugs.

(c) The terms and conditions applied to the benefits required by this section, that shall be applied equally to all benefits under the plan contract, shall include, but not be limited to, the following:

(1) Maximum lifetime benefits.

(2) Copayments.

(3) Individual and family deductibles.

(d) For the purposes of this section, "severe mental illnesses" shall include:

(1) Schizophrenia.

(2) Schizoaffective disorder.

(3) Bipolar disorder (manic–depressive illness).

(4) Major depressive disorders.

(5) Panic disorder.

(6) Obsessive–compulsive disorder.

(7) Pervasive developmental disorder or autism.

(8) Anorexia nervosa.

(9) Bulimia nervosa.

(e) For the purposes of this section, a child suffering from, "serious emotional disturbances of a child" shall be defined as a child who (1) has one or more mental disorders as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, other than a primary substance use disorder or developmental disorder, that result in behavior inappropriate to the child's age according to expected developmental norms, and (2) who meets the criteria in paragraph (2) of subdivision (a) of Section 5600.3 of the Welfare and Institutions Code.

(f) This section shall not apply to contracts entered into pursuant to Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Division 9 of Part 3 of the Welfare and Institutions Code, between the State Department of Health Services and a health care service plan for enrolled Medi–Cal beneficiaries.

(g)(1) For the purpose of compliance with this section, a plan may provide coverage for all or part of the mental health services required by this section through a separate specialized health care service plan or mental health plan, and shall not be required to obtain an additional or specialized license for this purpose.

(2) A plan shall provide the mental health coverage required by this section in its entire service area and in emergency situations as may be required by applicable laws and regulations. For purposes of this section, health care service plan contracts that provide benefits to enrollees through preferred provider contracting arrangements are not precluded from requiring enrollees who reside or work in geographic areas served by specialized health care service plans or mental health plans to secure all or part of their mental health services within those geographic areas served by specialized health care service plans or mental health plans.

(3) Notwithstanding any other provision of law, in the provision of benefits required by this section, a health care service plan may utilize case management, network providers, utilization review techniques, prior authorization, copayments, or other cost sharing.

(h) Nothing in this section shall be construed to deny or restrict in any way the department's authority to ensure plan compliance with this chapter when a plan provides coverage for prescription drugs.
(Added by Stats.1999, c. 534 (A.B.88), § 2. Amended by Stats.2002, c. 791 (S.B.842), § 7.)

Chapter 3 CALIFORNIA COMMUNITY CARE FACILITIES ACT

Article 1 GENERAL PROVISIONS

§ 1502. Definitions

As used in this chapter:

(a) "Community care facility" means any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes the following:

(1) "Residential facility" means any family home, group care facility, or similar facility determined by the director, for 24–hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

(2) "Adult day program" means any community–based facility or program that provides care to persons 18 years of age or older in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of these individuals on less than a 24–hour basis.

(3) "Therapeutic day services facility" means any facility that provides nonmedical care, counseling, educational or vocational support, or social rehabilitation services on less than a 24–hour basis to persons under 18 years of age who would otherwise be placed in foster care or who are returning to families from foster care. Program standards for these facilities shall be developed by the department, pursuant to Section 1530, in consultation with therapeutic day services and foster care providers.

(4) "Foster family agency" means any organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.

(5) "Foster family home" means any residential facility providing 24–hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. The placement may be by a public or private child placement agency or by

a court order, or by voluntary placement by a parent, parents, or guardian. It also means a foster family home described in Section 1505.2.

(6) "Small family home" means any residential facility, in the licensee's family residence, that provides 24–hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities. A small family home may accept children with special health care needs, pursuant to subdivision (a) of Section 17710 of the Welfare and Institutions Code. In addition to placing children with special health care needs, the department may approve placement of children without special health care needs, up to the licensed capacity.

(7) "Social rehabilitation facility" means any residential facility that provides social rehabilitation services for no longer than 18 months in a group setting to adults recovering from mental illness who temporarily need assistance, guidance, or counseling. Program components shall be subject to program standards pursuant to Article 1 (commencing with Section 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and Institutions Code.

(8) "Community treatment facility" means any residential facility that provides mental health treatment services to children in a group setting and that has the capacity to provide secure containment. Program components shall be subject to program standards developed and enforced by the State Department of Mental Health pursuant to Section 4094 of the Welfare and Institutions Code.

Nothing in this section shall be construed to prohibit or discourage placement of persons who have mental or physical disabilities into any category of community care facility that meets the needs of the individual placed, if the placement is consistent with the licensing regulations of the department.

(9) "Full–service adoption agency" means any licensed entity engaged in the business of providing adoption services, that does all of the following:

(A) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.

(B) Assesses the birth parents, prospective adoptive parents, or child.

(C) Places children for adoption.

(D) Supervises adoptive placements.

Private full–service adoption agencies shall be organized and operated on a nonprofit basis.

(10) "Noncustodial adoption agency" means any licensed entity engaged in the business of providing adoption services, that does all of the following:

(A) Assesses the prospective adoptive parents.

(B) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved adoptive applicants.

(C) Cooperatively supervises adoptive placements with a full–service adoptive agency, but does not disrupt a placement or remove a child from a placement.

Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis.

(11) "Transitional shelter care facility" means any group care facility that provides for 24–hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Program components shall be subject to program standards developed by the State Department of Social Services pursuant to Section 1502.3.

(12) "Transitional housing placement facility" means a community care facility licensed by the department pursuant to Section 1559.110 to provide transitional housing opportunities to persons at least 17 years of age, and not more than 18 years of age unless the requirements of Section 11403 of the Welfare and Institutions Code are met, who are in out–of–home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.

(b) "Department" or "state department" means the State Department of Social Services.

(c) "Director" means the Director of Social Services.

(Added by Stats.1973, c. 1203, p. 2582, § 4. Amended by Stats.1976, c. 1350, p. 6159, § 1; Stats.1977, c. 1252, § 257, operative July 1, 1978; Stats.1977, c. 1199, § 5; Stats.1978, c. 288, § 1; Stats.1978, c. 429, § 134.55, eff. July 17, 1978, operative July 1, 1978; Stats.1978, c. 891, § 1, eff. Sept. 19, 1978; Stats.1982, c. 1124, p. 4051, § 1; Stats.1983, c. 1015, § 2; Stats.1984, c. 1309, § 1; Stats.1984, c. 1615, § 1.5; Stats.1985, c. 1127, § 1; Stats.1985, c. 1473, § 2; Stats.1986, c. 248, § 116; Stats.1986, c. 1120, § 2, eff. Sept. 24, 1986; Stats.1987, c. 1022, § 2.5; Stats.1988, c. 160, § 89; Stats.1988, c. 557, § 2; Stats.1988, c. 1142, § 3, eff. Sept. 22, 1988; Stats.1988, c. 1142, § 3.5, eff. Sept. 22, 1988, operative Jan. 1, 1989; Stats.1989, c. 1360, § 82; Stats.1990, c. 1139 (S.B.2039), § 1, eff. Sept. 21, 1990; Stats.1991, c. 1137 (A.B.760), § 1; Stats.1991, c. 1200 (S.B.90), § 1, eff. Oct. 14, 1991; Stats.1991, c. 1200 (S.B.90), § 1.5, eff. Oct. 14, 1991, operative Jan. 1, 1992; Stats.1992, c. 1374 (A.B.14), § 1, eff. Oct. 28, 1992; Stats.1993, c. 248 (S.B.465), § 1, eff. Aug. 2, 1993; Stats.1993, c. 1245 (S.B.282), § 2, eff. Oct. 11, 1993; Stats.1994, c. 950 (A.B.1334), § 2; Stats.1997, c. 793 (A.B.1544), § 7; Stats.1998, c. 873 (A.B.2774), § 1; Stats.2002, c. 773 (S.B.1982), § 2.)

Article 2 ADMINISTRATION

§ 1522.41. Certification program; training of group home facilities administrators; exclusive regulatory control

(a) The director, in consultation and collaboration with county placement officials, group home provider organizations, the Director of Mental Health, and the Director of Developmental Services, shall develop and establish a certification program to ensure that administrators of group home facilities have appropriate training to provide the care and services for which a license or certificate is issued.

(b)(1) In addition to any other requirements or qualifications required by the department, an administrator of a group home facility shall successfully complete a department–approved certification program pursuant to subdivision (c) prior to employment. An administrator employed in a group home on the effective date of this section shall meet the requirements of paragraph (2) of subdivision (c).

(2) In those cases where the individual is both the licensee and the administrator of a facility, the individual shall comply with all of the licensee and administrator requirements of this section.

(3) Failure to comply with this section shall constitute cause for revocation of the license of the facility.

(4) The licensee shall notify the department within 10 days of any change in administrators.

(c)(1) The administrator certification programs shall require a minimum of 40 hours of classroom instruction that provides training on a uniform core of knowledge in each of the following areas:

(A) Laws, regulations, and policies and procedural standards that impact the operations of the type of facility for which the applicant will be an administrator.

(B) Business operations.

(C) Management and supervision of staff.

(D) Psychosocial and educational needs of the facility residents.

(E) Community and support services.

(F) Physical needs for facility residents.

(G) Administration, storage, misuse, and interaction of medication used by facility residents.

(H) Resident admission, retention, and assessment procedures, including the right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not

be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(I) Nonviolent emergency intervention and reporting requirements.

(2) The department shall adopt separate program requirements for initial certification for persons who are employed as group home administrators on the effective date of this section. A person employed as an administrator of a group home facility on the effective date of this section, shall obtain a certificate by completing the training and testing requirements imposed by the department within 12 months of the effective date of the regulations implementing this section. After the effective date of this section, these administrators shall meet the requirements imposed by the department on all other group home administrators for certificate renewal.

(3) Individuals applying for certification under this section shall successfully complete an approved certification program, pass a written test administered by the department within 60 days of completing the program, and submit to the department the documentation required by subdivision (d) within 30 days after being notified of having passed the test. The department may extend these time deadlines for good cause. The department shall notify the applicant of his or her test results within 30 days of administering the test.

(d) The department shall not begin the process of issuing a certificate until receipt of all of the following:

(1) A certificate of completion of the administrator training required pursuant to this chapter.

(2) The fee required for issuance of the certificate. A fee of one hundred dollars ($100) shall be charged by the department to cover the costs of processing the application for certification.

(3) Documentation from the applicant that he or she has passed the written test.

(4) Submission of fingerprints pursuant to Section 1522. The department may waive the submission for those persons who have a current clearance on file.

(5) That person is at least 21 years of age.

(e) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of a group home facility. Any person willfully making any false representation as being a certified administrator or facility manager is guilty of a misdemeanor.

(f)(1) Certificates issued under this section shall be renewed every two years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 40 classroom hours of continuing education related to the core of knowledge specified in subdivision (c). For purposes of this section, an individual who is a group home facility administrator and who is required to complete the continuing education hours required by the regulations of the State Department of Developmental Services, and approved by the regional center, may have up to 24 of the required continuing education course hours credited toward the 40–hour continuing education requirement of this section. Community college course hours approved by the regional centers shall be accepted by the department for certification.

(2) Every administrator of a group home facility shall complete the continuing education requirements of this subdivision.

(3) Certificates issued under this section shall expire every two years on the anniversary date of the initial issuance of the certificate, except that any administrator receiving his or her initial certification on or after July 1, 1999, shall make an irrevocable election to have his or her recertification date for any subsequent recertification either on the date two years from the date of issuance of the certificate or on the individual's birthday during the second calendar year following certification. The department shall send a renewal notice to the certificate holder 90 days prior to the expiration date of the certificate. If the certificate is not renewed prior to its expiration date, reinstatement shall only be permitted after the certificate holder has paid a delinquency fee equal to three times the renewal fee and has provided evidence of completion of the continuing education required.

(4) To renew a certificate, the certificate holder shall, on or before the certificate expiration date, request renewal by submitting to the department documentation of completion of the required continuing education courses and pay the renewal fee of one hundred dollars ($100), irrespective of receipt of the department's notification of the renewal. A renewal request postmarked on or before the expiration of the certificate shall be proof of compliance with this paragraph.

(5) A suspended or revoked certificate shall be subject to expiration as provided for in this section. If reinstatement of the certificate is approved by the department, the certificate holder, as a condition precedent to reinstatement, shall submit proof of compliance with paragraphs (1) and (2) of subdivision (f), and shall pay a fee in an amount equal to the renewal fee, plus the delinquency fee, if any, accrued at the time of its revocation or suspension. Delinquency fees, if any, accrued subsequent to the time of its revocation or suspension and prior to an order for reinstatement, shall be waived for a period of 12 months to allow the individual sufficient time to complete the required continuing education units and to submit the required documentation. Individuals whose certificates will expire within 90 days after the order for reinstatement may be granted a three–month extension to renew their certificates during which time the delinquency fees shall not accrue.

(6) A certificate that is not renewed within four years after its expiration shall not be renewed, restored, reissued, or reinstated except upon completion of a certification training program, passing any test that may be required of an applicant for a new certificate at that time, and paying the appropriate fees provided for in this section.

(7) A fee of twenty–five dollars ($25) shall be charged for the reissuance of a lost certificate.

(8) A certificate holder shall inform the department of his or her employment status and change of mailing address within 30 days of any change.

(g) Unless otherwise ordered by the department, the certificate shall be considered forfeited under either of the following conditions:

(1) The department has revoked any license held by the administrator after the department issued the certificate.

(2) The department has issued an exclusion order against the administrator pursuant to Section 1558, 1568.092, 1569.58, or 1596.8897, after the department issued the certificate, and the administrator did not appeal the exclusion order or, after the appeal, the department issued a decision and order that upheld the exclusion order.

(h)(1) The department, in consultation and collaboration with county placement officials, provider organizations, the State Department of Mental Health, and the State Department of Developmental Services, shall establish, by regulation, the program content, the testing instrument, the process for approving certification training programs, and criteria to be used in authorizing individuals, organizations, or educational institutions to conduct certification training programs and continuing education courses. The department may also grant continuing education hours for continuing courses offered by accredited educational institutions that are consistent with the requirements in this section. The department may deny vendor approval to any agency or person in any of the following circumstances:

(A) The applicant has not provided the department with evidence satisfactory to the department of the ability of the applicant to satisfy the requirements of vendorization set out in the regulations adopted by the department pursuant to subdivision (j).

(B) The applicant person or agency has a conflict of interest in that the person or agency places its clients in group home facilities.

(C) The applicant public or private agency has a conflict of interest in that the agency is mandated to place clients in group homes and to pay directly for the services. The department may deny vendorization to this type of agency only as long as there are other vendor programs available to conduct the certification training programs and conduct education courses.

(2) The department may authorize vendors to conduct the administrator's certification training program pursuant to this section. The department shall conduct the written test pursuant to regulations adopted by the department.

(3) The department shall prepare and maintain an updated list of approved training vendors.

(4) The department may inspect certification training programs and continuing education courses to determine if content and teaching methods comply with regulations. If the department determines that any vendor is not complying with the requirements of this section, the department shall take appropriate action to bring the program into compliance, which may include removing the vendor from the approved list.

(5) The department shall establish reasonable procedures and timeframes not to exceed 30 days for the approval of vendor training programs.

(6) The department may charge a reasonable fee, not to exceed one hundred fifty dollars ($150) every two years, to certification program vendors for review and approval of the initial 40–hour training program pursuant to subdivision (c). The department may also charge the vendor a fee, not to exceed one hundred dollars ($100) every two years, for the review and approval of the continuing education courses needed for recertification pursuant to this subdivision.

(i) The department shall establish a registry for holders of certificates that shall include, at a minimum, information on employment status and criminal record clearance.

(j) Subdivisions (b) to (i), inclusive, shall be implemented upon regulations being adopted by the department, by January 1, 2000.

(k) Notwithstanding any provision of law to the contrary, vendors approved by the department who exclusively provide either initial or continuing education courses for certification of administrators of a group home facility as defined by regulations of the department, an adult residential facility as defined by regulations of the department, or a residential care facility for the elderly as defined in subdivision (k) of Section 1569.2, shall be regulated solely by the department pursuant to this chapter. No other state or local governmental entity shall be responsible for regulating the activity of those vendors.

(Added by Stats.1998, c. 311 (S.B.933), § 20, eff. Aug. 19, 1998. Amended by Stats.2003, c. 331 (A.B.458), § 2; Stats.2005, c. 423 (A.B.300), § 1.)

Article 3 REGULATIONS

§ 1530. Rules and regulations

The state department shall adopt, amend, or repeal, in accordance with Chapter 4.5 (commencing with Section 11371) [1] of Part 1 of Division 3 of Title 2 of the Government Code, such reasonable rules, regulations, and standards as may be necessary or proper to carry out the purposes and intent of this chapter and to enable the state department to exercise the powers and perform the duties conferred upon it by this chapter, not inconsistent with any of the provisions of any statute of this state.

Such regulations shall designate separate categories of licensure under which community care facilities shall be licensed pursuant to this chapter, which shall include a separate license category for residential care facilities for the elderly. Such regulations shall also designate the specialized services which community care facilities may be approved to provide pursuant to this chapter.

(Added by Stats.1973, c. 1203, p. 2587, § 4. Amended by Stats.1978, c. 288, § 2.)

[1] Repealed. See, now, Chapter 3.5 (commencing with § 11340).

§ 1530.1. Adult day programs

(a) The department shall adopt regulations, in consultation with providers, consumers, and other interested parties, to combine adult day care and adult day support centers licensing categories into one category, which shall be designated adult day programs.

(b) The consolidated regulations shall take into account the diversity of consumers and their caregivers, and the role of licensing in promoting consumer choice, health and safety, independence, and inclusion in the community.

(c) The department shall also take into account the diversity of existing programs designed to meet unique consumer needs, including, but not limited to, programs serving elders with cognitive or physical impairments, non–facility–based programs serving persons with developmental disabilities, respite–only programs, and other programs serving a unique population.

(Added by Stats.2002, c. 773 (S.B.1982), § 5.)

§ 1530.5. Regulations for homes

(a) The state department, in establishing regulations, including provisions for periodic inspections, under this chapter for foster family homes and certified family homes of foster family agencies, shall consider these homes as private residences, and shall establish regulations for these foster family homes and certified family homes of foster family agencies as an entirely separate regulation package from regulations for all other community care facilities. These foster family homes and certified family homes of foster family agencies shall not be subject to civil penalties pursuant to Section 1548. The department, in adopting and amending regulations for these foster family homes and certified family homes of foster family agencies, shall consult with foster parent and foster family agency organizations in order to ensure compliance with the requirement of this section.

(b) This section shall not apply to small family homes or foster family agencies as defined in Section 1502.

(Added by Stats.1975, c. 917, p. 2024, § 2, eff. Sept. 20, 1975. Amended by Stats.1976, c. 969, p. 2266, § 2; Stats.1982, c. 1124, p. 4052, § 2; Stats.1986, c. 1120, § 6, eff. Sept. 24, 1986; Stats.1987, c. 1022, § 6; Stats.1993, c. 248 (S.B.465), § 3, eff. Aug. 2, 1993.)

§ 1530.6. Persons providing residential foster care; authority to give same legal consent as parent; exceptions; rules and regulations

Notwithstanding any other provision of law, persons licensed pursuant to this chapter to provide residential foster care to a child either placed with them pursuant to order of the juvenile court or voluntarily placed with them by the person or persons having legal custody of such child, may give the same legal consent for that child as a parent except for the following: (1) marriage; (2) entry into the armed forces; (3) medical and dental treatment, except that consent may be given for ordinary medical and dental treatment for such child, including, but not limited to, immunizations, physical examinations, and X–rays; and (4) if the child is voluntarily placed by the parent or parents, those items as are agreed to in writing by the parties to the placement.

To this effect, the state department shall prescribe rules and regulations to carry out the intent of this section.

This section does not apply to any situation in which a juvenile court order expressly reserves the right to consent to those activities to the court.

(Added by Stats.1977, c. 391, § 1, eff. Aug. 27, 1977. Amended by Stats.1992, c. 865 (A.B.2691), § 1.)

§ 1530.8. Licensed group homes; temporary shelter care facilities that care for children

(a)(1) The department shall adopt regulations for community care facilities licensed as group homes, and for temporary shelter care facilities as defined in subdivision (c), that care for dependent children, children placed by a regional center, or voluntary placements, who are younger than 6 years of age. The department shall adopt these regulations after assessing the needs of this

population and developing standards pursuant to Section 11467.1 of the Welfare and Institutions Code.

(2) The department shall adopt regulations under this section that apply to mother and infant programs serving children younger than six years of age who reside in a group home with a minor parent who is the primary caregiver of the child that shall be subject to the requirements of subdivision (d).

(b) The regulations shall include physical environment standards, including staffing and health and safety requirements, that meet or exceed state child care standards under Title 5 and Title 22 of the California Code of Regulations.

(c) For purposes of this section, a "temporary shelter care facility" means any residential facility that meets all of the following requirements:

(1) It is owned and operated by the county.

(2) It is a 24–hour facility that provides short–term residential care and supervision for dependent children under 18 years of age who have been removed from their homes as a result of abuse or neglect, as defined in Section 300 of the Welfare and Institutions Code, or both.

(d)(1) By September 1, 1999, the department shall submit for public comment regulations specific to mother and infant programs serving children younger than six years of age who are dependents of the court and reside in a group home with a minor child who is the primary caregiver of the child.

(2) The regulations shall include provisions that when the minor parent is absent and the facility is providing direct care to children younger than six years of age who are dependents of the court, there shall be one child care staff person for every four children of minor parents.

(3) In developing these proposed regulations, the department shall issue the proposed regulations for public comment, and shall refer to existing national standards for mother and infant programs as a guideline, where applicable.

(4) Prior to preparing the proposed regulations, the department shall consult with interested parties by convening a meeting by February 28, 1999, that shall include, but not be limited to, representatives from a public interest law firm specializing in children's issues and provider organizations.

(Added by Stats.1993, c. 1088 (A.B.1197), § 2. Amended by Stats.1998, c. 1056 (A.B.2773), § 9.8.)

§ 1530.9. Regulations for licensed community treatment facilities; program certification and standards enforcement

(a) The department shall, with the advice and assistance of the State Department of Mental Health, counties, parent and children's advocacy groups, and group home providers, adopt regulations for the licensing of licensed community treatment facilities at the earliest possible date, but no later than December 31, 1994.

(b) The regulations adopted pursuant to this section shall specify requirements for facility operation and maintenance.

(c) Program certification and standards enforcement shall be the responsibility of the State Department of Mental Health, pursuant to Section 4094 of the Welfare and Institutions Code. The State Department of Social Services shall not issue a community treatment facility license unless the applicant has obtained certification of compliance from the State Department of Mental Health.

(Added by Stats.1993, c. 1245 (S.B.282), § 3, eff. 0ct. 11, 1993.)

§ 1530.91. Orientation for school–aged children and their representatives by care provider that provides foster care; foster care facility with six or more children to post rights

(a) Except as provided in subdivision (b) any care provider that provides foster care for children pursuant to this chapter shall provide each schoolage child and his or her authorized representative, as defined in regulations adopted by the department, who is placed in foster care, with an age and developmentally appropriate orientation that includes an explanation of the rights of the child, as specified in Section 16001.9 of the Welfare and Institutions Code, and addresses the child's questions and concerns.

(b) Any facility licensed to provide foster care for six or more children pursuant to this chapter shall post a listing of a foster child's rights specified in Section 16001.9 of the Welfare and Institutions Code. The office of the State Foster Care Ombudsperson shall design posters and provide the posters to each facility subject to this subdivision. The posters shall include the telephone number of the State Foster Care Ombudsperson.

(Added by Stats.2001, c. 683 (A.B.899), § 1.5.)

Chapter 3.2 RESIDENTIAL CARE FACILITIES FOR THE ELDERLY

Article 7 LEVELS OF CARE

§ 1569.725. Incidental medical care; residential care facility

(a) A residential care facility for the elderly may permit incidental medical services to be provided through a home health agency, licensed pursuant to Chapter 8 (commencing with Section 1725), when all of the following conditions are met:

(1) The facility, in the judgment of the department, has the ability to provide the supporting care and supervision appropriate to meet the needs of the resident receiving care from a home health agency.

(2) The home health agency has been advised of the regulations pertaining to residential care facilities for the elderly and the requirements related to incidental medical services being provided in the facility.

(3) There is evidence of an agreed–upon protocol between the home health agency and the residential care facility for the elderly. The protocol shall address areas of responsibility of the home health agency and the facility and the need for communication and the sharing of resident information related to the home health care plan. Resident information may be shared between the home health agency and the residential care facility for the elderly relative to the resident's medical condition and the care and treatment provided to the resident by the home health agency including, but not limited to, medical information, as defined by the Confidentiality of Medical Information Act, Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

(4) There is ongoing communication between the home health agency and the residential care facility for the elderly about the services provided to the resident by the home health agency and the frequency and duration of care to be provided.

(b) Nothing in this section is intended to expand the scope of care and supervision for a residential care facility for the elderly, as prescribed by this chapter.

(c) Nothing in this section shall require any care or supervision to be provided by the residential care facility for the elderly beyond that which is permitted in this chapter.

(d) The department shall not be responsible for the evaluation of medical services provided to the resident of the residential care facility for the elderly by the home health agency.

(e) Any regulations, policies, or procedures related to sharing resident information and development of protocols, established by the department pursuant to this section, shall be developed in consultation with the State Department of Health Services and persons representing home health agencies and residential care facilities for the elderly.

(Added by Stats.1997, c. 494 (S.B.1231), § 2. Amended by Stats.1998, c. 831 (S.B.2194), § 6.)

HEALTH AND SAFETY CODE — EMERGENCY MEDICAL SERVICES

Division 2.5 EMERGENCY MEDICAL SERVICES

Chapter 9 LIABILITY LIMITATION

§ 1799.110. Physicians and surgeons; general acute care hospital emergency departments

(a) In any action for damages involving a claim of negligence against a physician and surgeon arising out of emergency medical services provided in a general acute care hospital emergency department, the trier of fact shall consider, together with all other relevant matters, the circumstances constituting the emergency, as defined herein, and the degree of care and skill ordinarily exercised by reputable members of the physician and surgeon's profession in the same or similar locality, in like cases, and under similar emergency circumstances.

(b) For the purposes of this section, "emergency medical services" and "emergency medical care" means those medical services required for the immediate diagnosis and treatment of medical conditions which, if not immediately diagnosed and treated, could lead to serious physical or mental disability or death.

(c) In any action for damages involving a claim of negligence against a physician and surgeon providing emergency medical coverage for a general acute care hospital emergency department, the court shall admit expert medical testimony only from physicians and surgeons who have had substantial professional experience within the last five years while assigned to provide emergency medical coverage in a general acute care hospital emergency department. For purposes of this section, "substantial professional experience" shall be determined by the custom and practice of the manner in which emergency medical coverage is provided in general acute care hospital emergency departments in the same or similar localities where the alleged negligence occurred.

(Added by Stats.1983, c. 1246, § 41.)

§ 1799.111. General acute care hospitals; detention or release; persons exhibiting mental disorders

(a) A licensed general acute care hospital, as defined by subdivision (a) of Section 1250, licensed professional staff of the hospital, or any physician and surgeon, providing emergency medical services to a person at the hospital shall not be civilly or criminally liable for detaining a person, or for the actions of the person after release from the hospital, if all of the following conditions exist:

(1) The person cannot be safely released from the hospital because, in the opinion of the treating physician and surgeon, or a clinical psychologist with the medical staff privileges, clinical privileges, or professional responsibilities provided in Section 1316.5, the person, as a result of a mental disorder, presents a danger to himself or herself, or others, or is gravely disabled. For purposes of this paragraph, "gravely disabled" means an inability to provide for his or her basic personal needs of food, clothing, or shelter.

(2) The hospital staff, treating physician and surgeon, or appropriate licensed mental health professional, have made, and documented, repeated unsuccessful efforts to find appropriate mental health treatment for the person.

(3) The person is not detained beyond eight hours.

(b) Nothing in this section shall affect the responsibility of a general acute care hospital to comply with all state laws and regulations pertaining to the use of seclusion and restraint and psychiatric medications for psychiatric patients. Persons detained under this section shall retain their legal rights regarding consent for medical treatment.

(c) A person detained under this section shall be credited for the time detained, up to eight hours, in the event he or she is placed on a subsequent 72–hour hold pursuant to Section 5150 of the Welfare and Institutions Code.

(Added by Stats.1996, c. 716 (S.B.2003), § 1. Amended by Stats.1997, c. 547 (S.B.1111), § 1.)

HEALTH AND SAFETY CODE — ENVIRONMENTAL HEALTH

Division 104 ENVIRONMENTAL HEALTH

Part 5 SHERMAN FOOD, DRUG, AND COSMETIC LAWS

Chapter 6 DRUGS AND DEVICES

Article 4 EXPERIMENTAL USE OF DRUGS

§ 111515. Experimental drug

As used in this article, "experimental drug" means any of the following:

A drug intended for investigational use under Section 111595.

(Added by Stats.1995, c. 415 (S.B.1360), § 6.)

§ 111520. Prescription or administration of experimental drug in violation of article

No person shall prescribe or knowingly administer an experimental drug to another person in violation of this article.

(Added by Stats.1995, c. 415 (S.B.1360), § 6.)

§ 111525. Consent; method and manner of obtaining

Prior to prescribing or administering an experimental drug, consent to the use of the drug shall be obtained in the method and manner specified in Chapter 1.3 (commencing with Section 24170) of Division 20.

(Added by Stats.1995, c. 415 (S.B.1360), § 6.)

§ 111530. Consent if subject is minor; drugs to which section applies

(a) Notwithstanding the provisions of Section 24175, if the subject is a minor, consent shall be provided by a parent or guardian of the subject and shall also be provided by the subject if the subject is seven years of age or older.

(b) Consent given pursuant to this section shall only be for the prescribing or administering of an experimental drug that is related to maintaining or improving the health of the subject or related to obtaining information about a pathological condition of the subject.

(Added by Stats.1995, c. 415 (S.B.1360), § 6.)

§ 111535. Revocation of consent

Consent given pursuant to Section 111525 may be revoked at any time by either verbal or written communication to the practitioner supervising the administration of the experimental drug.

(Added by Stats.1995, c. 415 (S.B.1360), § 6.)

§ 111540. Review and approval of experimental activity by committee for protection of human subjects; copy of consent procedures; filing

Prior to administering an experimental drug, the experimental activity as a whole, including the consent procedures required by Section 111525, shall be reviewed and approved by a committee for the protection of human subjects that is acceptable, as determined by the department. A committee for the protection of human subjects that operates under a general or special assurance approved by the federal Department of Health, Education, and Welfare pursuant to Part 46 of Title 45 of the Code of Federal Regulations shall be an acceptable committee for purposes of this section. A copy of the consent procedures approved by a committee for the protection of human subjects shall be filed with the department prior to the commencement of the experiment.

(Added by Stats.1995, c. 415 (S.B.1360), § 6.)

§ 111545. Prescription by persons having ownership interest in nursing home facility or intermediate care facility prohibited

A person having an ownership interest in a skilled nursing facility or intermediate care facility, as those terms are defined in Section 1250, may not prescribe an experimental drug for a patient in the facility.

(Added by Stats.1995, c. 415 (S.B.1360), § 6.)

HEALTH AND SAFETY CODE — PERSONAL HEALTH CARE

Division 106 PERSONAL HEALTH CARE (INCLUDING MATERNAL, CHILD, AND ADOLESCENT)

Part 1 GENERAL ADMINISTRATION

Chapter 1 PATIENT ACCESS TO HEALTH RECORDS

§ 123100. Right to health information; legislative findings, declarations, and intent

The Legislature finds and declares that every person having ultimate responsibility for decisions respecting his or her own health care also possesses a concomitant right of access to complete information respecting his or her condition and care provided. Similarly, persons having responsibility for decisions respecting the health care of others should, in general, have access to information on the patient's condition and care. It is, therefore, the intent of the Legislature in enacting this chapter to establish procedures for providing access to health care records or summaries of those records by patients and by those persons having responsibility for decisions respecting the health care of others.

(Added by Stats.1995, c. 415 (S.B.1360), § 8.)

§ 123105. Definitions

As used in this chapter:

(a) "Health care provider" means any of the following:

(1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

(3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.

(4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.

(5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.

(6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.

(7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.

(9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.

(10) A marriage and family therapist licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.

(12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.

(b) "Mental health records" means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. "Mental health records" includes, but is not limited to, all alcohol and drug abuse records.

(c) "Patient" means a patient or former patient of a health care provider.

(d) "Patient records" means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. "Patient records" includes only records pertaining to the patient requesting the records or whose representative requests the records. "Patient records" does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. "Patient records" does not include information contained in aggregate form, such as indices, registers, or logs.

(e) "Patient's representative" or "representative" means a parent or the guardian of a minor who is a patient, or the guardian or conservator of the person of an adult patient, or the beneficiary or personal representative of a deceased patient.

(f) "Alcohol and drug abuse records" means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

(Added by Stats.1995, c. 415 (S.B.1360), § 8. Amended by Stats.2002, c. 1013 (S.B.2026), § 89; Stats.2002, c. 1150 (S.B.1955), § 49.)

§ 123110. Inspection and copying of patient records and related material

(a) Notwithstanding Section 5328 of the Welfare and Institutions Code, and except as provided in Sections 123115 and 123120, any adult patient of a health care provider, any minor patient authorized by law to consent to medical treatment, and any patient representative shall be entitled to inspect patient records upon presenting to the health care provider a written request for those records and upon

payment of reasonable clerical costs incurred in locating and making the records available. However, a patient who is a minor shall be entitled to inspect patient records pertaining only to health care of a type for which the minor is lawfully authorized to consent. A health care provider shall permit this inspection during business hours within five working days after receipt of the written request. The inspection shall be conducted by the patient or patient's representative requesting the inspection, who may be accompanied by one other person of his or her choosing.

(b) Additionally, any patient or patient's representative shall be entitled to copies of all or any portion of the patient records that he or she has a right to inspect, upon presenting a written request to the health care provider specifying the records to be copied, together with a fee to defray the cost of copying, that shall not exceed twenty–five cents ($0.25) per page or fifty cents ($0.50) per page for records that are copied from microfilm and any additional reasonable clerical costs incurred in making the records available. The health care provider shall ensure that the copies are transmitted within 15 days after receiving the written request.

(c) Copies of X–rays or tracings derived from electrocardiography, electroencephalography, or electromyography need not be provided to the patient or patient's representative under this section, if the original X–rays or tracings are transmitted to another health care provider upon written request of the patient or patient's representative and within 15 days after receipt of the request. The request shall specify the name and address of the health care provider to whom the records are to be delivered. All reasonable costs, not exceeding actual costs, incurred by a health care provider in providing copies pursuant to this subdivision may be charged to the patient or representative requesting the copies.

(d)(1) Notwithstanding any provision of this section, and except as provided in Sections 123115 and 123120, any patient or former patient or the patient's representative shall be entitled to a copy, at no charge, of the relevant portion of the patient's records, upon presenting to the provider a written request, and proof that the records are needed to support an appeal regarding eligibility for a public benefit program. These programs shall be the Medi–Cal program, social security disability insurance benefits, and Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled (SSI/SSP) benefits. For purposes of this subdivision, "relevant portion of the patient's records" means those records regarding services rendered to the patient during the time period beginning with the date of the patient's initial application for public benefits up to and including the date that a final determination is made by the public benefits program with which the patient's application is pending.

(2) Although a patient shall not be limited to a single request, the patient or patient's representative shall be entitled to no more than one copy of any relevant portion of his or her record free of charge.

(3) This subdivision shall not apply to any patient who is represented by a private attorney who is paying for the costs related to the patient's appeal, pending the outcome of that appeal. For purposes of this subdivision, "private attorney" means any attorney not employed by a nonprofit legal services entity.

(e) If the patient's appeal regarding eligibility for a public benefit program specified in subdivision (d) is successful, the hospital or other health care provider may bill the patient, at the rates specified in subdivisions (b) and (c), for the copies of the medical records previously provided free of charge.

(f) If a patient or his or her representative requests a record pursuant to subdivision (d), the health care provider shall ensure that the copies are transmitted within 30 days after receiving the written request.

(g) This section shall not be construed to preclude a health care provider from requiring reasonable verification of identity prior to permitting inspection or copying of patient records, provided this requirement is not used oppressively or discriminatorily to frustrate or delay compliance with this section. Nothing in this chapter shall be deemed to supersede any rights that a patient or representative might otherwise have or exercise under Section 1158 of the Evidence Code or any other provision of law. Nothing in this chapter shall require a health care provider to retain records longer than required by applicable statutes or administrative regulations.

(h) This chapter shall not be construed to render a health care provider liable for the quality of his or her records or the copies provided in excess of existing law and regulations with respect to the quality of medical records. A health care provider shall not be liable to the patient or any other person for any consequences that result from disclosure of patient records as required by this chapter. A health care provider shall not discriminate against classes or categories of providers in the transmittal of X–rays or other patient records, or copies of these X–rays or records, to other providers as authorized by this section.

Every health care provider shall adopt policies and establish procedures for the uniform transmittal of X–rays and other patient records that effectively prevent the discrimination described in this subdivision. A health care provider may establish reasonable conditions, including a reasonable deposit fee, to ensure the return of original X–rays transmitted to another health care provider, provided the conditions do not discriminate on the basis of, or in a manner related to, the license of the provider to which the X–rays are transmitted.

(i) Any health care provider described in paragraphs (4) to (10), inclusive, of subdivision (a) of Section 123105 who willfully violates this chapter is guilty of unprofessional conduct. Any health care provider described in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 123105 that willfully violates this chapter is guilty of an infraction punishable by a fine of not more than one hundred dollars ($100). The state agency, board, or commission that issued the health care provider's professional or institutional license shall consider a violation as grounds for disciplinary action with respect to the licensure, including suspension or revocation of the license or certificate.

(j) This section shall be construed as prohibiting a health care provider from withholding patient records or summaries of patient records because of an unpaid bill for health care services. Any health care provider who willfully withholds patient records or summaries of patient records because of an unpaid bill for health care services shall be subject to the sanctions specified in subdivision (i).

(Added by Stats.1995, c. 415 (S.B.1360), § 8. Amended by Stats.2001, c. 325 (A.B.1311), § 1.)

§ 123111. Written addendum; inspection of records

(a) Any adult patient who inspects his or her patient records pursuant to Section 123110 shall have the right to provide to the health care provider a written addendum with respect to any item or statement in his or her records that the patient believes to be incomplete or incorrect. The addendum shall be limited to 250 words per alleged incomplete or incorrect item in the patient's record and shall clearly indicate in writing that the patient wishes the addendum to be made a part of his or her record.

(b) The health care provider shall attach the addendum to the patient's records and shall include that addendum whenever the health care provider makes a disclosure of the allegedly incomplete or incorrect portion of the patient's records to any third party.

(c) The receipt of information in a patient's addendum which contains defamatory or otherwise unlawful language, and the inclusion of this information in the patient's records, in accordance with subdivision (b), shall not, in and of itself, subject the health care provider to liability in any civil, criminal, administrative, or other proceeding.

(d) Subdivision (f) of Section 123110 and Section 123120 shall be applicable with respect to any violation of this section by a health care provider.

(Added by Stats.2000, c. 1066 (S.B.1903), § 4. Amended by Stats.2001, c. 159 (S.B.662), § 138.)

§ 123115. Representative of minor; mental health records

(a) The representative of a minor shall not be entitled to inspect or obtain copies of the minor's patient records in either of the following circumstances:

(1) With respect to which the minor has a right of inspection under Section 123110.

(2) Where the health care provider determines that access to the patient records requested by the representative would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well–being. The decision of the health care provider as to whether or not a minor's records are available for inspection under this section shall not attach any liability to the provider, unless the decision is found to be in bad faith.

(b) When a health care provider determines there is a substantial risk of significant adverse or detrimental consequences to a patient in seeing or receiving a copy of mental health records requested by the patient, the provider may decline to permit inspection or provide copies of the records to the patient, subject to the following conditions:

(1) The health care provider shall make a written record, to be included with the mental health records requested, noting the date of the request and explaining the health care provider's reason for refusing to permit inspection or provide copies of the records, including a description of the specific adverse or detrimental consequences to the patient that the provider anticipates would occur if inspection or copying were permitted.

(2) The health care provider shall permit inspection by, or provide copies of the mental health records to, a licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, or licensed clinical social worker, designated by request of the patient. Any marriage and family therapist registered intern, as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, may not inspect the patient's mental health records or obtain copies thereof, except pursuant to the direction or supervision of a licensed professional specified in subdivision (f) of Section 4980.40 of the Business and Professions Code. Prior to providing copies of mental health records to a marriage and family therapist registered intern, a receipt for those records shall be signed by the supervising licensed professional. The licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, or marriage and family therapist registered intern to whom the records are provided for inspection or copying shall not permit inspection or copying by the patient.

(3) The health care provider shall inform the patient of the provider's refusal to permit him or her to inspect or obtain copies of the requested records, and inform the patient of the right to require the provider to permit inspection by, or provide copies to, a licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, or licensed clinical social worker, designated by written authorization of the patient.

(4) The health care provider shall indicate in the mental health records of the patient whether the request was made under paragraph (2).

(Added by Stats.1995, c. 415 (S.B.1360), § 8. Amended by Stats.1997, c. 388 (S.B.1295), § 1; Stats.2000, c. 519 (A.B.2161), § 2.)

§ 123120. Enforcement action; costs and attorney fees

Any patient or representative aggrieved by a violation of Section 123110 may, in addition to any other remedy provided by law, bring an action against the health care provider to enforce the obligations prescribed by Section 123110. Any judgment rendered in the action may, in the discretion of the court, include an award of costs and reasonable attorney fees to the prevailing party.

(Added by Stats.1995, c. 415 (S.B.1360), § 8.)

§ 123125. Alcohol and drug abuse records; communicable disease carriers

(a) This chapter shall not require a health care provider to permit inspection or provide copies of alcohol and drug abuse records where, or in a manner, prohibited by Section 408 of the federal Drug Abuse Office and Treatment Act of 1972 (Public Law 92–255) or Section 333 of the federal Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (Public Law 91–616), or by regulations adopted pursuant to these federal laws. Alcohol and drug abuse records subject to these federal laws shall also be subject to this chapter, to the extent that these federal laws do not prohibit disclosure of the records. All other alcohol and drug abuse records shall be fully subject to this chapter.

(b) This chapter shall not require a health care provider to permit inspection or provide copies of records or portions of records where or in a manner prohibited by existing law respecting the confidentiality of information regarding communicable disease carriers.

(Added by Stats.1995, c. 415 (S.B.1360), § 8.)

§ 123130. Summary of record

(a) A health care provider may prepare a summary of the record, according to the requirements of this section, for inspection and copying by a patient. If the health care provider chooses to prepare a summary of the record rather than allowing access to the entire record, he or she shall make the summary of the record available to the patient within 10 working days from the date of the patient's request. However, if more time is needed because the record is of extraordinary length or because the patient was discharged from a licensed health facility within the last 10 days, the health care provider shall notify the patient of this fact and the date that the summary will be completed, but in no case shall more than 30 days elapse between the request by the patient and the delivery of the summary. In preparing the summary of the record the health care provider shall not be obligated to include information that is not contained in the original record.

(b) A health care provider may confer with the patient in an attempt to clarify the patient's purpose and goal in obtaining his or her record. If as a consequence the patient requests information about only certain injuries, illnesses, or episodes, this subdivision shall not require the provider to prepare the summary required by this subdivision for other than the injuries, illnesses, or episodes so requested by the patient. The summary shall contain for each injury, illness, or episode any information included in the record relative to the following:

(1) Chief complaint or complaints including pertinent history.

(2) Findings from consultations and referrals to other health care providers.

(3) Diagnosis, where determined.

(4) Treatment plan and regimen including medications prescribed.

(5) Progress of the treatment.

(6) Prognosis including significant continuing problems or conditions.

(7) Pertinent reports of diagnostic procedures and tests and all discharge summaries.

(8) Objective findings from the most recent physical examination, such as blood pressure, weight, and actual values from routine laboratory tests.

(c) This section shall not be construed to require any medical records to be written or maintained in any manner not otherwise required by law.

(d) The summary shall contain a list of all current medications prescribed, including dosage, and any sensitivities or allergies to medications recorded by the provider.

(e) Subdivision (c) of Section 123110 shall be applicable whether or not the health care provider elects to prepare a summary of the record.

(f) The health care provider may charge no more than a reasonable fee based on actual time and cost for the preparation of the summary. The cost shall be based on a computation of the actual time spent preparing the summary for availability to the patient or the patient's representative. It is the intent of the Legislature that summaries of the records be made available at the lowest possible cost to the patient.
(Added by Stats.1995, c. 415 (S.B.1360), § 8.)

§ 123135. Extent of access; application of confidentiality and information laws

Except as otherwise provided by law, nothing in this chapter shall be construed to grant greater access to individual patient records by any person, firm, association, organization, partnership, business trust, company, corporation, or municipal or other public corporation, or government officer or agency. Therefore, this chapter does not do any of the following:

(a) Relieve employers of the requirements of the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code).

(b) Relieve any person subject to the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code) from the requirements of that act.

(c) Relieve government agencies of the requirements of the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).
(Added by Stats.1995, c. 415 (S.B.1360), § 8.)

§ 123140. Application of Information Practices Act; state agency records

The Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) shall prevail over this chapter with respect to records maintained by a state agency.
(Added by Stats.1995, c. 415 (S.B.1360), § 8.)

§ 123145. Preservation of records by health services providers; damages actions for abandonment of records

(a) Providers of health services that are licensed pursuant to Sections 1205, 1253, 1575 and 1726 have an obligation, if the licensee ceases operation, to preserve records for a minimum of seven years following discharge of the patient, except that the records of unemancipated minors shall be kept at least one year after the minor has reached the age of 18 years, and in any case, not less than seven years.

(b) The department or any person injured as a result of the licensee's abandonment of health records may bring an action in a proper court for the amount of damage suffered as a result thereof. In the event that the licensee is a corporation or partnership that is dissolved, the person injured may take action against that corporation's or partnership's principle officers of record at the time of dissolution.

(c) Abandoned means violating subdivision (a) and leaving patients treated by the licensee without access to medical information to which they are entitled pursuant to Section 123110.
(Added by Stats.1995, c. 415 (S.B.1360), § 8.)

§ 123147. Documentation of patient's principal spoken language

(a) Except as provided in subdivision (b), all health facilities, as defined in Section 1250, and all primary care clinics that are either licensed under Section 1204 or exempt from licensure under Section 1206, shall include a patient's principal spoken language on the patient's health records.

(b) Any long–term health care facility, as defined in Section 1418, that already completes the minimum data set form as specified in Section 14110.15 of the Welfare and Institutions Code, including documentation of a patient's principal spoken language, shall be deemed to be in compliance with subdivision (a).
(Added by Stats.2005, c. 313 (A.B.800), § 1.)

§ 123148. Test results; recording and reporting to patient; Internet or other electronic posting; plain language

(a) Notwithstanding any other provision of law, a health care professional at whose request a test is performed shall provide or arrange for the provision of the results of a clinical laboratory test to the patient who is the subject of the test if so requested by the patient, in oral or written form. The results shall be conveyed in plain language and in oral or written form, except the results may be conveyed in electronic form if requested by the patient and if deemed most appropriate by the health care professional who requested the test.

(b)(1) Consent of the patient to receive his or her laboratory results by Internet posting or other electronic means shall be obtained in a manner consistent with the requirements of Section 56.10 or 56.11 of the Civil Code. In the event that a health care professional arranges for the provision of test results by Internet posting or other electronic manner, the results shall be delivered to a patient in a reasonable time period, but only after the results have been reviewed by the health care professional. Access to clinical laboratory test results shall be restricted by the use of a secure personal identification number when the results are delivered to a patient by Internet posting or other electronic manner.

(2) Nothing in paragraph (1) shall prohibit direct communication by Internet posting or the use of other electronic means to convey clinical laboratory test results by a treating health care professional who ordered the test for his or her patient or by a health care professional acting on behalf of, or with the authorization of, the treating health care professional who ordered the test.

(c) When a patient requests to receive his or her laboratory test results by Internet posting, the health care professional shall advise the patient of any charges that may be assessed directly to the patient or insurer for the service and that the patient may call the health care professional for a more detailed explanation of the laboratory test results when delivered.

(d) The electronic provision of test results under this section shall be in accordance with any applicable federal law governing privacy and security of electronic personal health records. However, any state statute, if enacted, that governs privacy and security of electronic personal health records, shall apply to test results under this section and shall prevail over federal law if federal law permits.

(e) The test results to be reported to the patient pursuant to this section shall be recorded in the patient's medical record, and shall be reported to the patient within a reasonable time period after the test results are received at the offices of the health care professional who requested the test.

(f) Notwithstanding subdivisions (a) and (b), none of the following clinical laboratory test results and any other related results shall be conveyed to a patient by Internet posting or other electronic means:

(1) HIV antibody test.

(2) Presence of antigens indicating a hepatitis infection.

(3) Abusing the use of drugs.

(4) Test results related to routinely processed tissues, including skin biopsies, Pap smear tests, products of conception, and bone marrow aspirations for morphological evaluation, if they reveal a malignancy.

(g) Patient identifiable test results and health information that have been provided under this section shall not be used for any commercial purpose without the consent of the patient, obtained in a manner consistent with the requirements of Section 56.11 of the Civil Code.

(h) Any third party to whom laboratory test results are disclosed pursuant to this section shall be deemed a provider of administrative services, as that term is used in paragraph (3) of subdivision (c) of Section 56.10 of the Civil Code, and shall be subject to all limitations and penalties applicable to that section.

(i) A patient may not be required to pay any cost, or be charged any fee, for electing to receive his or her laboratory results in any manner other than by Internet posting or other electronic form.

(j) A patient or his or her physician may revoke any consent provided under this section at any time and without penalty, except to the extent that action has been taken in reliance on that consent.

(Added by Stats.1995, c. 415 (S.B.1360), § 8. Amended by Stats.2001, c. 529 (A.B.1490), § 1; Stats.2002, c. 128 (A.B.2831), § 1.)

§ 123149. Electronic recordkeeping systems; additional requirements

(a) Providers of health services, licensed pursuant to Sections 1205, 1253, 1575, and 1726, that utilize electronic recordkeeping systems only, shall comply with the additional requirements of this section. These additional requirements do not apply to patient records if hard copy versions of the patient records are retained.

(b) Any use of electronic recordkeeping to store patient records shall ensure the safety and integrity of those records at least to the extent of hard copy records. All providers set forth in subdivision (a) shall ensure the safety and integrity of all electronic media used to store patient records by employing an offsite backup storage system, an image mechanism that is able to copy signature documents, and a mechanism to ensure that once a record is input, it is unalterable.

(c) Original hard copies of patient records may be destroyed once the record has been electronically stored.

(d) The printout of the computerized version shall be considered the original as defined in Section 255 of the Evidence Code for purposes of providing copies to patients, the Division of Licensing and Certification, and for introduction into evidence in accordance with Sections 1550 and 1551 of the Evidence Code, in administrative or court proceedings.

(e) Access to electronically stored patient records shall be made available to the Division of Licensing and Certification staff promptly, upon request.

(f) This section does not exempt licensed clinics, health facilities, adult day health care centers, and home health agencies from the requirement of maintaining original copies of patient records that cannot be electronically stored.

(g) Any health care provider subject to this section, choosing to utilize an electronic recordkeeping system, shall develop and implement policies and procedures to include safeguards for confidentiality and unauthorized access to electronically stored patient health records, authentication by electronic signature keys, and systems maintenance.

(h) Nothing contained in this chapter shall affect the existing regulatory requirements for the access, use, disclosure, confidentiality, retention of record contents, and maintenance of health information in patient records by health care providers.

(i) This chapter does not prohibit any provider of health care services from maintaining or retaining patient records electronically.

(Added by Stats.1995, c. 415 (S.B.1360), § 8.)

§ 123149.5. Information transmitted during delivery of health care via telemedicine; incorporation into patient's medical record

(a) It is the intent of the Legislature that all medical information transmitted during the delivery of health care via telemedicine, as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, become part of the patient's medical record maintained by the licensed health care provider.

(b) This section shall not be construed to limit or waive any of the requirements of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(Added by Stats.1996, c. 864 (S.B.1665), § 8.)

HEALTH AND SAFETY CODE — STATEWIDE HEALTH PLANNING AND DEVELOPMENT

Division 107 STATEWIDE HEALTH PLANNING AND DEVELOPMENT

Part 3 HEALTH PROFESSIONS DEVELOPMENT

Chapter 5 HEALTH PROFESSIONS EDUCATION FOUNDATION PROGRAMS

Article 4 LICENSED MENTAL HEALTH SERVICE PROVIDER EDUCATION PROGRAM

§ 128454. Establishment of program; definitions; grant applicants; administration and requirements of program

(a) There is hereby created the Licensed Mental Health Service Provider Education Program within the Health Professions Education Foundation.

(b) For purposes of this article, the following definitions shall apply:

(1) "Licensed mental health service provider" means a psychologist, marriage and family therapist, and licensed clinical social worker.

(2) "Mental health professional shortage area" means an area designated as such by the Health Resources and Services Administration (HRSA) of the United States Department of Health and Human Services.

(c) Commencing January 1, 2005, any licensed mental health service provider who provides direct patient care in a publicly funded facility or a mental health professional shortage area may apply for grants under the program to reimburse his or her educational loans related to a career as a licensed mental health service provider.

(d) The Health Professions Education Foundation shall make recommendations to the director of the office concerning all of the following:

(1) A standard contractual agreement to be signed by the director and any licensed mental health service provider who is serving in a publicly funded facility or a mental health professional shortage area that would require the licensed mental health service provider who receives a grant under the program to work in the publicly funded facility or a mental health professional shortage area for at least one year.

(2) The maximum allowable total grant amount per individual licensed mental health service provider.

(3) The maximum allowable annual grant amount per individual licensed mental health service provider.

(e) The Health Professions Education Foundation shall develop the program, which shall comply with all of the following requirements:

(1) The total amount of grants under the program per individual licensed mental health service provider shall not exceed the amount

of educational loans related to a career as a licensed mental health service provider incurred by that provider.

(2) The program shall keep the fees from the different licensed providers separate to ensure that all grants are funded by those fees collected from the corresponding licensed provider groups.

(3) A loan forgiveness grant may be provided in installments proportionate to the amount of the service obligation that has been completed.

(4) The number of persons who may be considered for the program shall be limited by the funds made available pursuant to Section 128458.

(Added by Stats.2003, c. 437 (A.B.938), § 5.)

§ 128456. Advice from representatives and organizations

In developing the program established pursuant to this article, the Health Professions Education Foundation shall solicit the advice of representatives of the Board of Behavioral Science Examiners, the Board of Psychology, the State Department of Mental Health, the California Mental Health Directors Association, the California Mental Health Planning Council, professional mental health care organizations, the California Healthcare Association, the Chancellor of the California Community Colleges, and the Chancellor of the California State University. The foundation shall solicit the advice of representatives who reflect the demographic, cultural, and linguistic diversity of the state.

(Added by Stats.2003, c. 437 (A.B.938), § 5.)

§ 128458. Mental Health Practitioner Education Fund; expenditures

There is hereby established in the State Treasury the Mental Health Practitioner Education Fund. The moneys in the fund, upon appropriation by the Legislature, shall be available for expenditure by the Office of Statewide Health Planning and Development for purposes of this article.

(Added by Stats.2003, c. 437 (A.B.938), § 5.)

Part 7 FACILITIES DESIGN REVIEW AND CONSTRUCTION

Chapter 1 HEALTH FACILITIES

Article 3 GENERAL REQUIREMENTS AND ADMINISTRATION

§ 129790. Correctional treatment centers; building standards

The office shall propose specific space, architectural, structural, mechanical, plumbing, and electrical standards for correctional treatment centers in cooperation with the Board of Corrections, the Department of Corrections, and the Department of the Youth Authority.

(Added by Stats.1995, c. 415 (S.B.1360), § 9. Amended by Stats.1998, c. 369 (A.B.2747), § 7.)

Article 4 SPECIAL REQUIREMENTS

§ 129905. Correctional hospital buildings and treatment centers; plans for construction or alteration; exemption; certification of conformance with applicable building standards; secondary review

Subject to the complete exemption contained in paragraphs (6) and (7) of subdivision (b) of Section 129725, and notwithstanding any other provision of law, plans for the construction or alteration of any hospital building, as defined in Section 1250, or any building specified in Section 129875, that are prepared by or under the supervision of the Department of Corrections or on behalf of the Department of the Youth Authority, shall not require the review and approval of the statewide office. In lieu of review and approval by the statewide office, the Department of Corrections and the Department of the Youth Authority shall certify to the statewide office that their plans and construction are in full conformance with all applicable building standards, including, but not limited to, fire and life and safety standards, and the requirements of this chapter for the architectural, structural, mechanical, plumbing, and electrical systems. The Department of Corrections and the Department of the Youth Authority shall use a secondary peer review procedure to review designs to ensure the adherence to all design standards for all new construction projects, and shall ensure that the construction is inspected by a competent, onsite inspector to ensure the construction is in compliance with the design and plan specifications.

Subject to the complete exemption contained in paragraphs (6) and (7) of subdivision (b) of Section 129725, and notwithstanding any other provision of law, plans for the construction or alteration of any correctional treatment center that are prepared by or under the supervision of a law enforcement agency of a city, county, or city and county shall not require the review and approval of the statewide office. In lieu of review and approval by the statewide office, the law enforcement agency of a city, county, or city and county shall certify to the statewide office that the plans and construction are in full conformance with all applicable building standards, including, but not limited to, fire and life and safety standards, and the requirements of this chapter for the architectural, structural, mechanical, plumbing, and electrical systems.

It is the intent of the Legislature that, except as specified in this section, all hospital buildings as defined by this chapter constructed by or under the supervision of the Department of Corrections or local law enforcement agencies, or constructed on behalf of the Department of the Youth Authority shall at a minimum meet all applicable regulations adopted pursuant to this chapter and all other applicable state laws.

(Added by Stats.1995, c. 415 (S.B.1360), § 9. Amended by Stats.1996, c. 1023 (S.B.1497), § 373.7, eff. Sept. 29, 1996; Stats.2002, c. 351 (A.B.3050), § 11.)

INSURANCE CODE — GENERAL RULES GOVERNING INSURANCE

INSURANCE CODE

Division 1 GENERAL RULES GOVERNING INSURANCE

Part 2 THE BUSINESS OF INSURANCE

Chapter 1 GENERAL REGULATIONS

Article 6.6 INSURANCE INFORMATION AND PRIVACY PROTECTION ACT

§ 791. Purpose of article

The purpose of this article is to establish standards for the collection, use and disclosure of information gathered in connection with insurance transactions by insurance institutions, agents or insurance–support organizations; to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices, including the need to minimize intrusiveness; to establish a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to such information for the purpose of verifying or disputing its accuracy; to limit the disclosure of information collected in connection with insurance transactions; and to enable insurance applicants and policyholders to obtain the reasons for any adverse underwriting decision.

(Added by Stats.1980, c. 1214, p. 4103, § 1.)

§ 791.01. Scope of article

(a) The obligations imposed by this article shall apply to those insurance institutions, agents or insurance–support organizations which, on or after October 1, 1981:

(1) In the case of life or disability insurance:

(A) Collect, receive or maintain information in connection with insurance transactions which pertains to natural persons who are residents of this state, or

(B) Engage in insurance transactions with applicants, individuals or policyholders who are residents of this state.

(2) In the case of property or casualty insurance:

(A) Collect, receive or maintain information in connection with insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state, or

(B) Engage in insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state.

(b) The rights granted by this article shall extend to:

(1) In the case of life or disability insurance, the following persons who are residents of this state:

(A) Natural persons who are the subject of information collected, received or maintained in connection with insurance transactions.

(B) Applicants, individuals or policyholders who engage in or seek to engage in insurance transactions.

(2) In the case of property or casualty insurance, the following persons:

(A) Natural persons who are the subject of information collected, received or maintained in connection with insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state, and

(B) Applicants, individuals or policyholders who engage in or seek to engage in insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state.

(c) For purposes of this section, a person shall be considered a resident of this state if the person's last known mailing address, as shown in the records of the insurance institution, agent, or insurance–support organization, is located in this state.

(d) This article shall not apply to any person or entity engaged in the business of title insurance as defined in Section 12340.3.

(e) This article shall not apply to a person or entity engaged in the business of a home protection company, as defined in Section 12740, which does not obtain or maintain personal information, as defined in this article, of its policyholders and applicants.

(f) Insurance institutions, agents, insurance support organizations or any insurance transaction subject to this article shall be exempt from Part 2.6 (commencing with Section 56) of Division 1 of, and Sections 1785.20 and 1786.40 of, the Civil Code.

(Added by Stats.1980, c. 1214, p. 4103, § 1. Amended by Stats.1981, c. 106, p. 795, § 1.3, eff. June 29, 1981; Stats.1981, c. 121, p. 856, § 1, eff. June 30, 1981.)

§ 791.02. Definitions

As used in this act:

(a)(1) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that is individually underwritten:

(A) A declination of insurance coverage.

(B) A termination of insurance coverage.

(C) Failure of an agent to apply for insurance coverage with a specific insurance institution that the agent represents and that is requested by an applicant.

(D) In the case of a property or casualty insurance coverage:

(i) Placement by an insurance institution or agent of a risk with a residual market mechanism, with an unauthorized insurer, or with an insurance institution that provides insurance to other than preferred or standard risks, if in fact the placement is at other than a preferred or standard rate. An adverse underwriting decision, in case of placement with an insurance institution that provides insurance to other than preferred or standard risks, shall not include placement if the applicant or insured did not specify or apply for placement as a preferred or standard risk or placement with a particular company insuring preferred or standard risks, or

(ii) The charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished.

(E) In the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(2) Notwithstanding paragraph (1), any of the following actions shall not be considered adverse underwriting decisions but the insurance institution or agent responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(A) The termination of an individual policy form on a class or statewide basis.

(B) A declination of insurance coverage solely because coverage is not available on a class or statewide basis.

(C) The rescission of a policy.

(b) "Affiliate" or "affiliated" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

(c) "Agent" means any person licensed pursuant to Chapter 5 (commencing with Section 1621), Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831).

(d) "Applicant" means any person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(e) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(f) "Consumer reporting agency" means any person who:

(1) Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee.

(2) Obtains information primarily from sources other than insurance institutions.

(3) Furnishes consumer reports to other persons.

(g) "Control," including the terms "controlled by" or "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(h) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or agent of requested insurance coverage.

(i) "Individual" means any natural person who is any of the following:

(1) In the case of property or casualty insurance, is a past, present, or proposed named insured or certificate holder.

(2) In the case of life or disability insurance, is a past, present, or proposed principal insured or certificate holder.

(3) Is a past, present, or proposed policyowner.

(4) Is a past or present applicant.

(5) Is a past or present claimant.

(6) Derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this act.

(j) "Institutional source" means any person or governmental entity that provides information about an individual to an agent, insurance institution, or insurance–support organization, other than any of the following:

(1) An agent.

(2) The individual who is the subject of the information.

(3) A natural person acting in a personal capacity rather than in a business or professional capacity.

(k) "Insurance institution" means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance. "Insurance institution" shall not include agents, insurance–support organizations, or health care service plans regulated pursuant to the Knox–Keene Health Care Service Plan Act, Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(*l*) "Insurance–support organization" means:

(1) Any person who regularly engages, in whole or in part, in the business of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or agent for insurance transactions, including either of the following:

(A) The furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for use in connection with an insurance transaction.

(B) The collection of personal information from insurance institutions, agents, or other insurance–support organizations for the purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(2) Notwithstanding paragraph (1), the following persons shall not be considered "insurance–support organizations": agents, governmental institutions, insurance institutions, medical care institutions, medical professionals, and peer review committees.

(m) "Insurance transaction" means any transaction involving insurance primarily for personal, family, or household needs rather than business or professional needs that entails either of the following:

(1) The determination of an individual's eligibility for an insurance coverage, benefit, or payment.

(2) The servicing of an insurance application, policy, contract, or certificate.

(n) "Investigative consumer report" means a consumer report or portion thereof in which information about a natural person's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning those items of information.

(*o*) "Medical care institution" means any facility or institution that is licensed to provide health care services to natural persons, including but not limited to, hospitals, skilled nursing facilities, home health agencies, medical clinics, rehabilitation agencies, and public health agencies.

(p) "Medical professional" means any person licensed or certified to provide health care services to natural persons, including but not limited to, a physician, dentist, nurse, optometrist, physical or occupational therapist, psychiatric social worker, clinical dietitian, clinical psychologist, chiropractor, pharmacist, or speech therapist.

(q) "Medical record information" means personal information that is both of the following:

(1) Relates to an individual's physical or mental condition, medical history or medical treatment.

(2) Is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(r) "Person" means any natural person, corporation, association, partnership, limited liability company, or other legal entity.

(s) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. "Personal information" includes an individual's name and address and "medical record information" but does not include "privileged information."

(t) "Policyholder" means any person who is any of the following:

(1) In the case of individual property or casualty insurance, is a present named insured.

(2) In the case of individual life or disability insurance, is a present policyowner.

(3) In the case of group insurance, which is individually underwritten, is a present group certificate holder.

(u) "Pretext interview" means an interview whereby a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(1) Pretends to be someone he or she is not.

(2) Pretends to represent a person he or she is not in fact representing.

(3) Misrepresents the true purpose of the interview.

(4) Refuses to identify himself or herself upon request.

(v) "Privileged information" means any individually identifiable information that both:

(1) Relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual.

(2) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. However, information otherwise meeting the requirements of this division shall nevertheless be considered "personal information" under this act if it is disclosed in violation of Section 791.13.

(w) "Residual market mechanism" means the California FAIR Plan Association, Chapter 10 (commencing with Section 10101) of Part 1 of Division 2, and the assigned risk plan, Chapter 1 (commencing with Section 11550) of Part 3 of Division 2.

(x) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(y) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the director to transact the business of insurance in this state.

(z) "Commissioner" means the Insurance Commissioner.

(Added by Stats.1980, c. 1214, p. 4103, § 1. Amended by Stats.1981, c. 106, p. 796, § 1.5, eff. June 29, 1981; Stats.1981, c. 121, p. 857, § 2, eff. June 30, 1981; Stats.1994, c. 1010 (S.B.2053), § 174; Stats.1999, c. 525 (S.B.78), § 172; Stats.1999, c. 526 (S.B.19), § 12; Stats.2000, c. 857 (A.B.2903), § 56; Stats.2000, c. 135 (A.B.2539), § 108.)

§ 791.03. Pretext interviews

No insurance institution, agent or insurance–support organization shall use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction; provided, however, that a pretext interview may be undertaken to obtain information from a person or institution that does not have a generally or statutorily recognized privileged relationship with the person to whom the information relates for the purpose of investigating a claim where there is a reasonable basis for suspecting criminal activity, fraud, material misrepresentation or material nondisclosure in connection with a claim.

(Added by Stats.1980, c. 1214, p. 4103, § 1. Amended by Stats.1981, c. 106, p. 799, § 2, eff. June 29, 1981.)

§ 791.04. Notice of personal information practices; applicants or policyholders

(a) An insurance institution or agent shall provide a notice of information practices to all applicants or policyholders in connection with insurance transactions as provided below:

(1) In the case of a written application for insurance, a notice shall be provided no later than:

(A) At the time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant, an insured under the policy, or from public records; or

(B) At the time the collection of personal information is initiated when personal information is collected from a source other than the applicant, an insured under the policy, or public records.

(2) In the case of a policy renewal, a notice shall be provided no later than the policy renewal date or the date upon which policy renewal is confirmed, except that no notice shall be required in connection with a policy renewal if either of the following applies:

(A) Personal information is collected only from the policyholder, and insured under the policy, or from public records.

(B) A notice meeting the requirements of this section has been given within the previous 24 months.

(3) In the case of a policy reinstatement or change in insurance benefits, a notice shall be provided no later than the time a request for a policy reinstatement or change in insurance benefits is received by the insurance institution, except that no notice shall be required if personal information is collected only from the policyholder, an insured under the policy, or from public records or if a notice meeting the requirements of this section has been given within the previous 24 months.

(b) The notice required by subdivision (a) shall be in writing and shall state all of the following:

(1) Whether personal information may be collected from persons other than the individual or individuals proposed for coverage.

(2) The types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect such information.

(3) The types of disclosures identified in subdivisions (b), (c), (d), (e), (f), (i), (k), (*l*), and (n) of Section 791.13 and the circumstances under which the disclosures may be made without prior authorization, except that only those circumstances need be described which occur with such frequency as to indicate a general business practice.

(4) A description of the rights established under Sections 791.08 and 791.09 and the manner in which the rights may be exercised.

(5) That information obtained from a report prepared by an insurance–support organization may be retained by the insurance–support organization and disclosed to other persons.

(c) In lieu of the notice prescribed in subdivision (b), the insurance institution or agent may provide an abbreviated notice informing the applicant or policyholder of the following:

(1) Personal information may be collected from persons other than the individual or individuals proposed for coverage.

(2) Such information as well as other personal or privileged information subsequently collected by the insurance institution or agent may in certain circumstances be disclosed to third parties without authorization.

(3) A right of access and correction exists with respect to all personal information collected.

(4) The notice prescribed in subdivision (b) will be furnished to the applicant or policyholder upon request.

(d) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.

(Added by Stats.1981, c. 106, p. 800, § 4, eff. June 29, 1981.)

§ 791.05. Questions designed solely for marketing or research purposes

An insurance institution or agent shall clearly specify those questions designed to obtain information solely for marketing or research purposes from an individual in connection with an insurance transaction.

(Added by Stats.1980, c. 1214, p. 4103, § 1. Amended by Stats.1981, c. 106, p. 801, § 5, eff. June 29, 1981.)

§ 791.06. Disclosure authorization forms; requirements for forms or statements

Notwithstanding any other provision of law, no insurance institution, agent or insurance–support organization may utilize as its disclosure authorization form in connection with insurance transactions a form or statement which authorizes the disclosure of personal or privileged information about an individual to the insurance institution, agent, or insurance–support organization unless the form or statement:

(a) Is written in plain language.

(b) Is dated.

(c) Specifies the types of persons authorized to disclose information about the individual.

(d) Specifies the nature of the information authorized to be disclosed.

(e) Names the insurance institution or agent and identifies by generic reference representatives of the insurance institution to whom the individual is authorizing information to be disclosed.

(f) Specifies the purposes for which the information is collected.

(g) Specifies the length of time the authorization shall remain valid, which shall be no longer than:

(1) In the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy, a policy reinstatement or a request for change in policy benefits:

(A) Thirty months from the date the authorization is signed if the application or request involves life, health or disability insurance; or

(B) One year from the date the authorization is signed if the application or request involves property or casualty insurance.

(2) In the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy:

(A) The term of coverage of the policy if the claim is for a health insurance benefit; or

(B) The duration of the claim if the claim is not for a health insurance benefit; or

(C) The duration of all claims processing activity performed in connection with all claims for benefits made by any person entitled to benefits under a nonprofit hospital service contract.

(h) Advises the individual or a person authorized to act on behalf of the individual that the individual or the individual's authorized representative is entitled to receive a copy of the authorization form.

(i) This section shall not be construed to require any authorization for the receipt of personal or privileged information about an individual.

(Added by Stats.1980, c. 1214, p. 4103, § 1. Amended by Stats.1981, c. 106, p. 801, § 6, eff. June 29, 1981.)

§ 791.07. Investigative consumer reports; information concerning interview and copies of reports

(a) No insurance institution, agent or insurance–support organization may prepare or request an investigative consumer report about an individual in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement or a change in insurance benefits unless the insurance institution or agent informs the individual of the following:

(1) That he or she may request to be interviewed in connection with the preparation of the investigative consumer report, and

(2) That upon a request pursuant to Section 791.08, he or she is entitled to receive a copy of the investigative consumer report.

(b) If an investigative consumer report is to be prepared by an insurance institution or agent, the insurance institution or agent shall institute reasonable procedures to conduct a personal interview requested by an individual.

(c) If an investigative consumer report is to be prepared by an insurance–support organization, the insurance institution or agent desiring such report shall inform the insurance–support organization whether a personal interview has been requested by the individual. The insurance–support organization shall institute reasonable procedures to conduct such interviews, if requested.

(Added by Stats.1980, c. 1214, p. 4103, § 1. Amended by Stats.1981, c. 106, p. 802, § 7, eff. June 29, 1981.)

§ 791.08. Response to request for access to recorded personal information; time; medical record information; fee

(a) If any individual, after proper identification, submits a written request to an insurance institution, agent or insurance–support organization for access to recorded personal information about the individual which is reasonably described by the individual and reasonably locatable and retrievable by the insurance institution, agent or insurance–support organization, the insurance institution, agent or insurance–support organization shall within 30 business days from the date such request is received:

(1) Inform the individual of the nature and substance of such recorded personal information in writing, by telephone or by other oral communication, whichever the insurance institution, agent or insurance–support organization prefers;

(2) Permit the individual to see and copy, in person, such recorded personal information pertaining to him or her or to obtain a copy of such recorded personal information by mail, whichever the individual prefers, unless such recorded personal information is in coded form, in which case an accurate translation in plain language shall be provided in writing;

(3) Disclose to the individual the identity, if recorded, of those persons to whom the insurance institution, agent or insurance–support organization has disclosed such personal information within two years prior to such request, and if the identity is not recorded, the names of those insurance institutions, agents, insurance–support organizations or other persons to whom such information is normally disclosed; and

(4) Provide the individual with a summary of the procedures by which he or she may request correction, amendment or deletion of recorded personal information.

(b) Any personal information provided pursuant to subdivision (a) above shall identify the source of the information if such source is an institutional source.

(c) Medical record information supplied by a medical care institution or medical professional and requested under subdivision (a), together with the identity of the medical professional or medical care institution which provided such information, shall be supplied either directly to the individual or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the individual prefers. Mental health record information shall be supplied directly to the individual, pursuant to this section, only with the approval of the qualified professional person with treatment responsibility for the condition to which the information relates. If it elects to disclose the information to a medical professional designated by the individual, the insurance institution, agent or insurance–support organization shall notify the individual, at the time of the disclosure, that it has provided the information to the medical professional.

(d) Except for personal information provided under Section 791.10, an insurance institution, agent or insurance–support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals.

(e) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under subdivision (a), an insurance institution, agent or insurance–support organization may make arrangements with an insurance–support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.

(f) The rights granted to individuals in this section shall extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, agent or insurance–support organization in connection with an insurance transaction. The rights granted to all natural persons by this subdivision shall not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

(g) For purposes of this section, the term "insurance–support organization" does not include "consumer reporting agency".

(Added by Stats.1980, c. 1214, p. 4103, § 1. Amended by Stats.1981, c. 106, p. 802, § 8, eff. June 29, 1981; Stats.1985, c. 1132, § 1.)

§ 791.09. Correction, amendment, or deletion of recorded personal information; notice; statement of individual

(a) Within 30 business days from the date of receipt of a written request from an individual to correct, amend or delete any recorded personal information about the individual within its possession, an insurance institution, agent or insurance–support organization shall either:

(1) Correct, amend or delete the portion of the recorded personal information in dispute; or

(2) Notify the individual of:

(A) Its refusal to make such correction, amendment or deletion.

(B) The reasons for the refusal.

(C) The individual's right to file a statement as provided in subdivision (c).

(b) If the insurance institution, agent or insurance–support organization corrects, amends or deletes recorded personal information in accordance with paragraph (1) of subdivision (a), the insurance institution, agent or insurance–support organization shall so notify the individual in writing and furnish the correction, amendment or fact of deletion to:

(1) Any person specifically designated by the individual who may have, within the preceding two years, received such recorded personal information.

(2) Any insurance–support organization whose primary source of personal information is insurance institutions if the insurance–support organization has systematically received such recorded personal information from the insurance institution within the preceding seven years; provided, however, that the correction, amendment or fact of deletion need not be furnished if the insurance–support organization no longer maintains recorded personal information about the individual.

(3) Any insurance–support organization that furnished the personal information that has been corrected, amended or deleted.

(c) Whenever an individual disagrees with an insurance institution's, agent's or insurance–support organization's refusal to correct, amend or delete recorded personal information, the individual shall be permitted to file with the insurance institution, agent or insurance–support organization:

(1) A concise statement setting forth what the individual thinks is the correct, relevant or fair information.

(2) A concise statement of the reasons why the individual disagrees with the insurance institution's, agent's or insurance–support organization's refusal to correct, amend or delete recorded personal information.

(d) In the event an individual files either statement as described in subdivision (c), the insurance institution, agent or support organization shall:

(1) File the statement with the disputed personal information and provide a means by which anyone reviewing the disputed personal information will be made aware of the individual's statement and have access to it.

(2) In any subsequent disclosure by the insurance institution, agent or support organization of the recorded personal information that is the subject of disagreement, clearly identify the matter or matters in dispute and provide the individual's statement along with the recorded personal information being disclosed.

(3) Furnish the statement to the persons and in the manner specified in subdivision (b).

(e) The rights granted to individuals in this section shall extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, agent or insurance–support organization in connection with an insurance transaction. The rights granted to all natural persons by this subdivision shall not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

(f) For purposes of this section, the term "insurance–support organization" does not include "consumer reporting agency".

(Added by Stats.1980, c. 1214, p. 4103, § 1. Amended by Stats.1981, c. 106, p. 804, § 9, eff. June 29, 1981.)

§ 791.10. Adverse underwriting decisions; declination, cancellation or nonrenewal of enumerated policies; specific reasons for decision

(a) In the event of an adverse underwriting decision the insurance institution or agent responsible for the decision shall:

(1) Either provide the applicant, policyholder, or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or, except as provided in subdivision (e), advise the person that upon written request he or she may receive the specific reason or reasons in writing.

(2) Provide the applicant, policyholder or individual proposed for coverage with a summary of the rights established under subdivision (b) and Sections 791.08 and 791.09.

(b) Upon receipt of a written request within 90 business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder or individual proposed for coverage, the insurance institution or agent shall furnish to such person within 21 business days from the date of receipt of such written request:

(1) The specific reason or reasons for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to paragraph (1) of subdivision (a).

(2) The specific items of personal and privileged information that support those reasons; provided, however:

(A) The insurance institution or agent shall not be required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the commissioner, that the applicant, policyholder or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation or material nondisclosure.

(B) Specific items of medical record information supplied by a medical care institution or medical professional shall be disclosed either directly to the individual about whom the information relates or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the individual prefers.

Mental health record information shall be supplied directly to the individual, pursuant to this subdivision, only with the approval of the qualified professional person with treatment responsibility for the condition to which the information relates.

(3) The names and addresses of the institutional sources that supplied the specific items of information given pursuant to paragraph (2) of subdivision (b); provided, however, that the identity of any medical professional or medical care institution shall be disclosed either directly to the individual or to the designated medical professional, whichever the individual prefers.

(c) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.

(d) When an adverse underwriting decision results solely from an oral request or inquiry, the explanation of reasons and summary of rights required by subdivision (a) or (e) may be given orally to the extent that such information is available.

(e) Except as provided in subdivision (d), with respect to a declination, cancellation, or nonrenewal of a property insurance policy covered by Section 675 or an automobile insurance policy covered by Section 660, or an individual life, health, or disability insurance policy, the insurance institution or agent responsible for the decision shall provide the specific reason or reasons in writing at the time of the decision. The communication of medical record information for a life or health insurance policy shall be subject to the disclosure requirements of subparagraph (B) of paragraph (2) of subdivision (a). This subdivision shall become operative on July 1, 2006.

(Added by Stats.1980, c. 1214, p. 4103, § 1. Amended by Stats.1981, c. 106, p. 805, § 10, eff. June 29, 1981; Stats.1985, c. 1132, § 2; Stats.2005, c. 436 (S.B.150), § 1.)

§ 791.11. Prohibited information concerning previous adverse underwriting decisions or previous insurance coverage

No insurance institution, agent or insurance–support organization may seek information in connection with an insurance transaction concerning:

(a) Any previous adverse underwriting decision experienced by an individual, or

(b) Any previous insurance coverage obtained by an individual through a residual market mechanism, unless such inquiry also requests the reasons for any previous adverse underwriting decision or the reasons why insurance coverage was previously obtained through a residual market mechanism.

(Added by Stats.1980, c. 1214, p. 4103, § 1.)

§ 791.12. Adverse underwriting decision; prohibited grounds

No insurance institution or agent may base an adverse underwriting decision in whole or in part on the following:

(a) On the fact of a previous adverse underwriting decision or on the fact that an individual previously obtained insurance coverage through a residual market mechanism; provided, however, an insurance institution or agent may base an adverse underwriting decision on further information obtained from an insurance institution or agent responsible for a previous adverse underwriting decision. The further information, when requested, shall create a conclusive presumption that the information is necessary to perform the requesting insurer's function in connection with an insurance transaction involving the individual and, when reasonably available, shall be furnished the requesting insurer and the individual, if applicable.

(b) On personal information received from an insurance–support organization whose primary source of information is insurance institutions; provided, however, an insurance institution or agent may base an adverse underwriting decision on further personal information obtained as the result of information received from an insurance–support organization.

(c) On the fact that an individual has previously inquired and received information about the scope or nature of coverage under a residential fire or property insurance policy, if the information is received from an insurance–support organization whose primary source of information is insurance institutions and the inquiry did not result in the filing of a claim.

(Added by Stats.1980, c. 1214, p. 4103, § 1. Amended by Stats.1981, c. 106, p. 806, § 11, eff. June 29, 1981; Stats.2003, c. 442 (A.B.1049), § 1.)

§ 791.13. Requisites to disclosure of personal or privileged information; authorization; persons to whom disclosure may be made

An insurance institution, agent, or insurance–support organization shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is:

(a) With the written authorization of the individual, and meets either of the conditions specified in paragraph (1) or (2):

(1) If such authorization is submitted by another insurance institution, agent, or insurance–support organization, the authorization meets the requirement of Section 791.06.

(2) If such authorization is submitted by a person other than an insurance institution, agent, or insurance–support organization, the authorization is:

(A) Dated;

(B) Signed by the individual.

(C) Obtained one year or less prior to the date a disclosure is sought pursuant to this section.

(b) To a person other than an insurance institution, agent, or insurance–support organization, provided such disclosure is reasonably necessary:

(1) To enable such person to perform a business, professional or insurance function for the disclosing insurance institution, agent, or insurance–support organization or insured and such person agrees not to disclose the information further without the individual's written authorization unless the further disclosure:

(A) Would otherwise be permitted by this section if made by an insurance institution, agent, or insurance–support organization; or

(B) Is reasonably necessary for such person to perform its function for the disclosing insurance institution, agent, or insurance–support organization.

(2) To enable such person to provide information to the disclosing insurance institution, agent or insurance–support organization for the purpose of:

(A) Determining an individual's eligibility for an insurance benefit or payment; or

(B) Detecting or preventing criminal activity, fraud, material misrepresentation or material nondisclosure in connection with an insurance transaction.

(c) To an insurance institution, agent, insurance–support organization or self–insurer, provided the information disclosed is limited to that which is reasonably necessary under either paragraph (1) or (2):

(1) To detect or prevent criminal activity, fraud, material misrepresentation or material nondisclosure in connection with insurance transactions; or

(2) For either the disclosing or receiving insurance institution, agent or insurance–support organization to perform its function in connection with an insurance transaction involving the individual.

(d) To a medical–care institution or medical professional for the purpose of any of the following:

(1) Verifying insurance coverage or benefits.

(2) Informing an individual of a medical problem of which the individual may not be aware.

(3) Conducting operations or services audit, provided only such information is disclosed as is reasonably necessary to accomplish the foregoing purposes.

(e) To an insurance regulatory authority; or

(f) To a law enforcement or other governmental authority pursuant to law.

(g) Otherwise permitted or required by law.

(h) In response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(i) Made for the purpose of conducting actuarial or research studies, provided:

(1) No individual may be identified in any actuarial or research report.

(2) Materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed.

(3) The actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent or insurance–support organization.

(j) To a party or a representative of a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the insurance institution, agent or insurance–support organization, provided:

(1) Prior to the consummation of the sale, transfer, merger, or consolidation only such information is disclosed as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation.

(2) The recipient agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent or insurance–support organization.

(k) To a person whose only use of such information will be in connection with the marketing of a product or service, provided:

(1) No medical–record information, privileged information, or personal information relating to an individual's character, personal habits, mode of living, or general reputation is disclosed, and no classification derived from such information is disclosed; or

(2) The individual has been given an opportunity to indicate that he or she does not want personal information disclosed for marketing

purposes and has given no indication that he or she does not want the information disclosed; and

(3) The person receiving such information agrees not to use it except in connection with the marketing of a product or service.

(*l*) To an affiliate whose only use of the information will be in connection with an audit of the insurance institution or agent or the marketing of an insurance product or service, provided the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.

(m) By a consumer reporting agency, provided the disclosure is to a person other than an insurance institution or agent.

(n) To a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or agent's operations or services, provided the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit.

(*o*) To a professional peer review organization for the purpose of reviewing the service or conduct of a medical–care institution or medical professional.

(p) To a governmental authority for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(q) To a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction.

(r) To a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurance institution or agent as having a legal or beneficial interest in a policy of insurance. The information disclosed shall be limited to that which is reasonably necessary to permit the person to protect his or her interest in the policy and shall be consistent with Article 5.5 (commencing with Section 770).

(Added by Stats.1981, c. 106, p. 807, § 13, eff. June 29, 1981.)

§ 791.14. Examination and investigation of insurance institutions, agents, or insurance–support organizations

(a) The commissioner shall have power to examine and investigate into the affairs of every insurance institution or agent doing business in this state to determine whether the insurance institution or agent has been or is engaged in any conduct in violation of this article.

(b) The commissioner shall have the power to examine and investigate into the affairs of every insurance–support organization acting on behalf of an insurance institution or agent which either transacts business in this state or transacts business outside this state that has an effect on a person residing in this state in order to determine whether such insurance–support organization has been or is engaged in any conduct in violation of this article.

(Added by Stats.1980, c. 1214, p. 4103, § 1.)

§ 791.15. Violations of article; statement of charges; notice of hearing; conduct of hearing; service of process

(a) Whenever the commissioner has reason to believe that an insurance institution, agent or insurance–support organization has been or is engaged in conduct in this state which violates this article, or if the commissioner believes that an insurance–support organization has been or is engaged in conduct outside this state which has an effect on a person residing in this state and which violates this article, the commissioner shall issue and serve upon such insurance institution, agent or insurance–support organization a statement of charges and notice of hearing to be held at a time and place fixed in the notice. The date for such hearing shall be not less than 30 days after the date of service.

(b) At the time and place fixed for such hearing the insurance institution, agent or insurance–support organization charged shall have an opportunity to answer the charges against it and present evidence on its behalf. Upon good cause shown, the commissioner shall permit any adversely affected person to intervene, appear and be heard at such hearing by counsel or in person.

(c) At any hearing conducted pursuant to this section the commissioner may administer oaths, examine and cross–examine witnesses and receive oral and documentary evidence. The commissioner shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence and other documents which are relevant to the hearing. A stenographic record of the hearing shall be made upon the request of any party or at the discretion of the commissioner. If no stenographic record is made and if judicial review is sought, the commissioner shall prepare a statement of the evidence for use on review. Hearings conducted under this section shall be governed by the same rules of evidence and procedure applicable to administrative proceedings conducted under the laws of this state.

(d) Statements of charges, notice, orders and other processes of the commissioner under this article may be served by anyone duly authorized to act on behalf of the commissioner. Service of process may be completed in the manner provided by law for service of process in civil actions or by registered mail. A copy of the statement of charges, notice, order or other process shall be provided to the person or persons whose rights under this article have been allegedly violated. A verified return setting forth the manner of service, or return postcard receipt in the case of registered mail, shall be sufficient proof of service.

(Added by Stats.1980, c. 1214, p. 4103, § 1. Amended by Stats.1981, c. 106, p. 809, § 14, eff. June 29, 1981.)

§ 791.16. Service of process; insurance–support organizations transacting business outside state

For the purpose of this article, an insurance–support organization transacting business outside this state which has an effect on a person residing in this state shall be deemed to have appointed the commissioner to accept service of process on its behalf, provided the commissioner causes a copy of such service to be mailed forthwith by registered mail to the insurance–support organization at its last known principal place of business. The return postcard receipt for such mailing shall be sufficient proof that the same was properly mailed by the commissioner.

(Added by Stats.1980, c. 1214, p. 4103, § 1.)

§ 791.17. Findings; cease and desist orders; written reports; service of process; modification or setting aside of orders or reports

(a) If, after a hearing pursuant to Section 791.15, the commissioner determines that the insurance institution, agent or insurance–support organization charged has engaged in conduct or practices in violation of this article, the commissioner shall reduce his or her findings to writing and shall issue and cause to be served upon such insurance institution, agent or insurance–support organization a copy of such findings and an order requiring such insurance institution, agent or insurance–support organization to cease and desist from the conduct or practices constituting a violation of this article.

(b) If, after a hearing pursuant to Section 791.15, the commissioner determines that the insurance institution, agent or insurance–support organization charged has not engaged in conduct or practices in violation of this article, the commissioner shall prepare a written report which sets forth findings of fact and conclusions of law. Such report shall be served upon the insurance institution, agent or insurance–support organization charged and upon the person or persons, if any, whose rights under this article were allegedly violated.

(c) Until the expiration of the time allowed under Section 791.18 for filing a petition for review or until such petition is actually filed, whichever occurs first, the commissioner may modify or set aside any order or report issued under this section. After the expiration of the time allowed under Section 791.18 for filing a petition for review, if no such petition has been duly filed, the commissioner may, after notice and opportunity for hearing, alter, modify or set aside, in whole or in part, any order or report issued under this section whenever conditions of fact or law warrant such action or if the public interest so requires.

(Added by Stats.1980, c. 1214, p. 4103, § 1. Amended by Stats.1981, c. 106, p. 810, § 15, eff. June 29, 1981.)

§ 791.18. Judicial review; finality of order or report

(a) Any person subject to an order of the commissioner under Section 779.17 or Section 791.20 or any person whose rights under this article were allegedly violated may obtain a review of any order or report of the commissioner by filing in a court of competent jurisdiction, within 30 days from the date of the service of such order or report, pursuant to Section 1094.5 of the Code of Civil Procedure. The court shall have jurisdiction to make and enter a decree modifying, affirming or reversing any order or report of the commissioner, in whole or in part.

(b) An order or report issued by the commissioner under Section 791.17 shall become final:

(1) Upon the expiration of the time allowed for the filing of a petition for review, if no such petition has been duly filed; except that the commissioner may modify or set aside an order or report to the extent provided in subdivision (c) of Section 791.17; or

(2) Upon a final decision of the court if the court directs that the order or report of the commissioner be affirmed or the petition for review dismissed.

(c) No order or report of the commissioner under this article or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order or report from any liability under any law of this state.

(Added by Stats.1980, c. 1214, p. 4103, § 1.)

§ 791.19. Violation of cease and desist order; penalties

Any person who violates a cease and desist order of the commissioner under Section 791.17 may, after notice and hearing and upon order of the commissioner, be subject to one or more of the following penalties, at the discretion of the commissioner:

(a) A monetary fine of not more than ten thousand dollars ($10,000) for each violation; or

(b) A monetary fine of not more than fifty thousand dollars ($50,000) if the commissioner finds that violations have occurred with such frequency as to constitute a general business practice; or

(c) Suspension or revocation of an insurance institution's or agent's license if the insurance institution or agent knew or reasonably should have known it was in violation of this article.

(Added by Stats.1980, c. 1214, p. 4103, § 1.)

§ 791.20. Equitable relief; damages; costs; attorney's fees; limitation of actions

(a) If any insurance institution, agent or insurance–support organization fails to comply with Section 791.08, 791.09 or 791.10 with respect to the rights granted under those sections, any person whose rights are violated may apply to any court of competent jurisdiction, for appropriate equitable relief.

(b) An insurance institution, agent or insurance–support organization which discloses information in violation of Section 791.13 shall be liable for damages sustained by the individual about whom the information relates. However no individual shall be entitled to a monetary award which exceeds the actual damages sustained by the individual as a result of a violation of Section 791.13.

(c) In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney's fee to the prevailing party.

(d) An action under this section shall be brought within two years from the date the alleged violation is or should have been discovered.

(e) Except as specifically provided in this section, there shall be no remedy or recovery available to individuals, in law or in equity, for occurrences constituting a violation of any provision of this act.

(Added by Stats.1980, c. 1214, p. 4103, § 1. Amended by Stats.1981, c. 106, p. 811, § 16, eff. June 29, 1981.)

§ 791.21. Immunity from defamation, invasion of privacy or negligence actions; exception for malice or willful intent

No cause of action in the nature of defamation, invasion of privacy or negligence shall arise against any person for disclosing personal or privileged information in accordance with this chapter, nor shall such a cause of action arise against any person for furnishing personal or privileged information to an insurance institution, agent or insurance–support organization; provided, however, this section shall provide no immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

(Added by Stats.1981, c. 106, p. 811, § 18, eff. June 29, 1981.)

§ 791.22. Obtaining information under false pretenses; penalties

Any person who knowingly and willfully obtains information about an individual from an insurance institution, agent or insurance–support organization under false pretenses shall be fined not more than ten thousand dollars ($10,000) or imprisoned for not more than one year, or both.

(Added by Stats.1980, c. 1214, p. 4103, § 1.)

§ 791.23. Effective date of rights under Sections 791.08, 791.09 and 791.13; effect upon Section 770.1

The rights granted under Sections 791.08, 791.09 and 791.13 shall take effect on October 1, 1981, regardless of the date of the collection or recei1pt of the information which is the subject of such sections. Nothing contained in subdivisions (k) and (*l*) of Section 791.13, or in any other provision of this article, shall in any way affect the provisions of Section 770.1.

(Added by Stats.1980, c. 1214, p. 4103, § 1. Amended by Stats.1981, c. 106, p. 811, § 19, eff. June 29, 1981.)

§ 791.26. Authorization granted to a nonprofit hospital service plan

Where an authorization from the individual was granted to a nonprofit hospital service plan prior to October 1, 1981, such authorization shall be deemed to be in compliance with this article.

(Added by Stats.1980, c. 1214, p. 4103, § 1. Amended by Stats.1981, c. 106, p. 811, § 20, eff. June 29, 1981.)

§ 791.27. Release of information to employers; authorizations; exceptions

A disability insurer that provides coverage for hospital, medical, or surgical expenses shall not release any information to an employer that would directly or indirectly indicate to the employer that an employee is receiving or has received services from a health care provider covered by the plan unless authorized to do so by the employee. An insurer that has, pursuant to an agreement, assumed the responsibility to pay compensation pursuant to Article 3 (commencing with Section 3750) of Chapter 4 of Part 1 of Division 4 of the Labor Code, shall not be considered an employer for the purposes of this section. Nothing in this section prohibits a disability insurer from releasing relevant information described in this section for the purposes set forth in Chapter 12 (commencing with Section 1871) of Part 2 of Division 1.

(Added by Stats.1994, c. 614 (S.B.1832), § 9.)

§ 791.28. Required disclosure regarding contacting claims information database; insurers issuing policies covering residential property

(a) An insurer under a personal lines residential property insurance policy, if it reports the claims history or loss experience of insureds under those policies to an insurance–support organization, shall provide the insured with the following additional disclosure at the time that it provides the disclosure required pursuant to paragraph (1) of subdivision (b) of Section 790.034:

"This insurer reports claim information to one or more claims information databases. The claim information is used to furnish loss history reports to insurers. If you are interested in obtaining a report from a claims information database, you may do so by contacting:

(Insert the name, toll–free telephone number, and, if applicable, Internet Web site address of each claims information database to which the insurer reports the information covered by this section)"

(b) This section shall become operative on July 1, 2006.
(Added by Stats.2005, c. 433 (A.B.1640), § 1, operative July 1, 2006.)v btr

INSURANCE CODE — CLASSES OF INSURANCE

Division 2 CLASSES OF INSURANCE

Part 2 LIFE AND DISABILITY INSURANCE

Chapter 1 THE CONTRACT

Article 2.5 DISCRIMINATORY PRACTICES

§ 10144.5. Severe mental illnesses; serious emotional disturbances of children

(a) Every policy of disability insurance that covers hospital, medical, or surgical expenses in this state that is issued, amended, or renewed on or after July 1, 2000, shall provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses of a person of any age, and of serious emotional disturbances of a child, as specified in subdivisions (d) and (e), under the same terms and conditions applied to other medical conditions, as specified in subdivision (c).

(b) These benefits shall include the following:

(1) Outpatient services.

(2) Inpatient hospital services.

(3) Partial hospital services.

(4) Prescription drugs, if the policy or contract includes coverage for prescription drugs.

(c) The terms and conditions applied to the benefits required by this section that shall be applied equally to all benefits under the disability insurance policy shall include, but not be limited to, the following:

(1) Maximum lifetime benefits.

(2) Copayments and coinsurance.

(3) Individual and family deductibles.

(d) For the purposes of this section, "severe mental illnesses" shall include:

(1) Schizophrenia.

(2) Schizoaffective disorder.

(3) Bipolar disorder (manic–depressive illness).

(4) Major depressive disorders.

(5) Panic disorder.

(6) Obsessive–compulsive disorder.

(7) Pervasive developmental disorder or autism.

(8) Anorexia nervosa.

(9) Bulimia nervosa.

(e) For the purposes of this section, a child suffering from, "serious emotional disturbances of a child" shall be defined as a child who (1) has one or more mental disorders as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, other than a primary substance use disorder or developmental disorder, that result in behavior inappropriate to the child's age according to expected developmental norms, and (2) who meets the criteria in paragraph (2) of subdivision (a) of Section 5600.3 of the Welfare and Institutions Code.

(f)(1) For the purpose of compliance with this section, a disability insurer may provide coverage for all or part of the mental health services required by this section through a separate specialized health care service plan or mental health plan, and shall not be required to obtain an additional or specialized license for this purpose.

(2) A disability insurer shall provide the mental health coverage required by this section in its entire in–state service area and in emergency situations as may be required by applicable laws and regulations. For purposes of this section, disability insurers are not precluded from requiring insureds who reside or work in geographic areas served by specialized health care service plans or mental health plans to secure all or part of their mental health services within those geographic areas served by specialized health care service plans or mental health plans.

(3) Notwithstanding any other provision of law, in the provision of benefits required by this section, a disability insurer may utilize case management, managed care, or utilization review.

(4) Any action that a disability insurer takes to implement this section, including, but not limited to, contracting with preferred provider organizations, shall not be deemed to be an action that would otherwise require licensure as a health care service plan under the Knox–Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(g) This section shall not apply to accident–only, specified disease, hospital indemnity, Medicare supplement, dental–only, or vision–only insurance policies.
(Added by Stats.1999, c. 534 (A.B.88), § 3.)

§ 10144.6. Determining eligibility for claim reimbursement; utilizing information regarding whether an enrollee's psychiatric inpatient admission was made on a voluntary or involuntary basis

No disability insurer may utilize any information regarding whether a beneficiary's psychiatric inpatient admission was made on a voluntary or involuntary basis for the purpose of determining eligibility for claim reimbursement.
(Added by Stats.2001, c. 506 (A.B.1424), § 4.)

PENAL CODE — OF CRIMES AND PUNISHMENT

PENAL CODE

Part 1 OF CRIMES AND PUNISHMENTS

Title 9 OF CRIMES AGAINST THE PERSON INVOLVING SEXUAL ASSAULT, AND CRIMES AGAINST PUBLIC DECENCY AND GOOD MORALS

Chapter 5 BIGAMY, INCEST, AND THE CRIME AGAINST NATURE

§ 290. Registration of sex offenders

(a)(1)(A) Every person described in paragraph (2), for the rest of his or her life while residing in California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing * * * in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides.

(B) If the person who is registering has more than one residence address at which he or she regularly resides, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides, regardless of the number of days or nights spent there. If all of the addresses are within the same jurisdiction, the person shall provide the registering authority with all of the addresses where he or she regularly resides.

(C) Every person described in paragraph (2), for the rest of his or her life while living as a transient in California shall be required to register, as follows:

(i) A transient must register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation, pursuant to paragraph (1) of subdivision (a), except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30–day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she must register in the jurisdiction in which he or she is physically present on the fifth working day following release, pursuant to paragraph (1) of subdivision (a). Beginning on or before the 30th day following initial registration upon release, a transient must reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30–day period, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, and additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is physically present upon the campus or in any of its facilities. A transient must reregister no less than once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30–day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.

(ii) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with subparagraph (A) of paragraph (1) of subdivision (a). A person registered at a residence address in accordance with subparagraph (A) of paragraph (1) of subdivision (a), who becomes transient shall have five working days within which to reregister as a transient in accordance with clause (i).

(iii) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in clause (i). A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30–day updates and the annual update, a transient shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e), and the information specified in clause (iv).

(iv) A transient shall, upon registration and reregistration, provide current information as required on the Department of Justice registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30–day period, he or she does not need to report the new place or places until the next required reregistration.

(v) Failure to comply with the requirement of reregistering every 30 days following initial registration pursuant to clause (i) of this subparagraph shall be punished in accordance with paragraph (6) of subdivision (g). Failure to comply with any other requirement of this section shall be punished in accordance with either paragraph (1) or (2) of subdivision (g).

(vi) A transient who moves out of state shall inform, in person * * *, the chief of police in the city in which he or she is physically present, or the sheriff of the county * * * if he or she is physically present in an unincorporated area or city that has no police department, within five working days, of his or her move out of state. The transient shall inform that registering agency of his or her planned destination, residence or transient location out of state, and any plans he or she has to return to California, if known. The law enforcement agency shall, within three days after receipt of this information, forward a copy of the change of location information to the Department of Justice. The department shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence or location.

(vii) For purposes of this section, "transient" means a person who has no residence. "Residence" means * * * one or more addresses at which a person regularly resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.

(viii) The transient registrant's duty to update his or her registration no less than every 30 days shall begin with his or her second transient update following the date this subdivision became effective.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out–of–state residents employed, or carrying on a vocation in California on a full–time or part–time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out–of–state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full–time or part–time basis, shall register in accordance with subparagraph (A). The place where the out–of–state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out–of–state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms "employed or carries on a vocation" include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any statutory predecessor that includes all elements of one of the above–mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above–mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D)(i) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A).

(ii) Any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(iii) Except as provided in clause (iv), any person who would be required to register while residing in the state of conviction for a sex offense committed in that state.

(iv) Clause (iii) shall not apply to a person required to register in the state of conviction if the conviction was for the equivalent of one of the following offenses, and the person is not subject to clause (i):

(I) Indecent exposure, pursuant to Section 314.

(II) Unlawful sexual intercourse, pursuant to Section 261.5.

(III) Incest, pursuant to Section 285.

(IV) Sodomy, pursuant to Section 286, or oral copulation, pursuant to Section 288a, provided that the offender notifies the Department of Justice that the sodomy or oral copulation conviction was for conduct between consenting adults, as described in subparagraph (F) of paragraph (2) of subdivision (a), and the department is able, upon the exercise of reasonable diligence, to verify that fact.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) Any person required to register pursuant to any provision of this section, regardless of whether the person's conviction has been dismissed pursuant to Section 1203.4, unless the person obtains a certificate of rehabilitation and is entitled to relief from registration pursuant to Section 290.5.

(G)(i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If

the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b)(1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c)(1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d)(1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e)(1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of

incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and a current photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, commitment, or release on probation pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and a current photograph of the person taken by the registering official.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the date he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f)(1) * * * (A) Any person who was * * * last registered at a residence address pursuant to this section * * * who * * * changes his or her residence address, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, * * * shall * * *, in person, within five working days * * * of the move, inform the law enforcement agency or agencies with which he or she last registered of the move, the new address or transient location, if known, and any plans he or she has to return to California * * *.

(B) If the person does not know the new residence address or location at the time of the move, the registrant shall, in person, within five working days of the move, inform the last registering agency or agencies that he or she is moving * * *. The person shall later notify the last registering agency or agencies, in writing, sent by certified or registered mail, of the new address or location within five working days of moving into the new residence address or location, whether temporary or permanent.

(C) The law enforcement agency or agencies shall, within three working days after receipt of this information, forward a copy of the change of address information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three working days of its receipt.

(g)(1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5), (7), and (9), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), any person who

is required to register or reregister pursuant to clause * * * (i) of subparagraph (C) of paragraph (1) of subdivision (a) and willfully fails to comply with the requirement that he or she reregister no less than every 30 days is guilty of a misdemeanor and shall be punished by imprisonment in a county jail at least 30 days, but not exceeding six months. A person who willfully fails to comply with the requirement that he or she reregister no less than every 30 days shall not be charged with this violation more often than once for a failure to register in any period of 90 days. Any person who willfully commits a third or subsequent violation of the requirements of subparagraph (C) of paragraph (1) of subdivision (a) that he or she reregister no less than every 30 days shall be punished in accordance with either paragraph (1) or (2) of this subdivision.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense as to each requirement he or she violated.

(9) In addition to any other penalty imposed under this subdivision, the failure to provide information required on registration and reregistration forms of the Department of Justice, or the provision of false information, is a crime punishable by imprisonment in a county jail for a period not exceeding one year.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as otherwise provided * * * by law, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*)(1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to 5 working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) The registration provisions of this section are applicable to every person described in this section, without regard to when his or her crime or crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

(Added by Stats.1985, c. 1474, § 2, operative Jan. 1, 1988. Amended by Stats.1986, c. 1299, § 7; Stats.1987, c. 753, § 3; Stats.1987, c. 1418, § 3.1; Stats.1989, c. 1316, § 2; Stats.1989, c. 1402, § 5; Stats.1989, c. 1407, § 4; Stats.1992, c. 197 (A.B.2297), § 1; Stats.1992, c. 695 (S.B.97), § 9, eff. Sept. 15, 1992; Stats.1993, c. 555 (A.B.191), § 1, eff. Sept. 28, 1993; Stats.1993, c. 589 (A.B. 2211), § 109; Stats.1993, c. 595 (A.B.595), § 8; Stats.1994, c. 863 (A.B.3456), § 1; Stats.1994, c. 864 (A.B.1211), § 1; Stats.1994, c. 865 (A.B.3513), § 1; Stats.1994, c. 867 (A.B.2500), § 2.7; Stats.1995, c. 91 (S.B.975), § 120; Stats.1995, c. 85 (A.B.173), § 1; Stats.1995, c. 840 (S.B.295), § 2; Stats.1996, c. 908 (A.B.1562), § 2, eff. Sept. 25, 1996; Stats.1996, c. 909 (S.B.1378), § 2; Stats.1997, c. 17 (S.B.947), § 96; Stats.1997, c. 80 (A.B.213), § 1; Stats.1997, c. 817 (A.B.59), § 3; Stats.1997, c. 818 (A.B.1303), § 4; Stats.1997, c. 819 (S.B.314), § 1; Stats.1997, c. 820 (S.B.882), § 1; Stats.1997, c. 821 (A.B.290), § 3, eff. Oct. 9, 1997; Stats.1997, c. 821 (A.B.290), § 3.5, eff. Oct. 9, 1997, operative Jan. 1, 1998; Stats.1998, c. 485 (A.B.2803), § 128–129; Stats.1998, c. 927 (A.B.796), § 1; Stats.1998, c. 928 (A.B.1927), § 1; Stats.1998, c. 929 (A.B.1745), § 1; Stats.1998, c. 930 (A.B.1078), § 1; Stats.1999, c. 83 (S.B.966), § 138; Stats.1999, c. 576 (A.B.1193), § 1; Stats.1999, c. 730 (S.B.1275), § 1; Stats.1999, c. 901 (S.B.341), § 1.5; Stats.2000, c. 240 (A.B.2502), § 1; Stats.2000, c. 287 (S.B.1955), § 7; Stats.2000, c. 648 (A.B.1340), § 1; Stats.2000, c. 649 (S.B.446), § 2.5; Stats.2001, c. 485 (A.B.1004), § 1; Stats.2001, c. 544 (A.B.4), § 1; Stats.2001, c. 843 (A.B.349), § 1.3; Stats.2002, c. 664 (A.B.3034), § 171; Stats.2002, c. 17 (S.B.836), § 1, eff. March 28, 2002; Stats.2003, c. 538 (S.B.356), § 1; Stats.2003, c. 540 (S.B.879), § 1; Stats.2003, c. 634 (A.B.1313), § 1.3, eff. Sept. 30, 2003; Stats.2004, c. 429 (A.B.2527), § 1; Stats.2004, c. 731 (S.B.1289), § 1; Stats.2004, c. 761 (A.B.2395), § 1.3; Stats. 2005, c. 704 (A.B.439), § 1; Stats.2005, c. 722 (A.B.1323), § 3, eff. Oct. 7, 2005; Stats.2005, c. 722 (A.B.1323), § 3.5, eff. Oct. 7, 2005, operative Jan. 1, 2006.)

§ 290.02. Preventing use of publicly–funded prescription drugs or therapies to treat erectile dysfunction in convicted sex offenders; information disclosure

(a) Notwithstanding any other law, the Department of Justice shall identify the names of persons required to register pursuant to Section 290 from a list of persons provided by the requesting agency, and provide those names and other information necessary to verify proper identification, to any state governmental entity responsible for authorizing or providing publicly funded prescription drugs or other therapies to treat erectile dysfunction of those persons. State governmental entities shall use information received pursuant to this section to protect public safety by preventing the use of prescription drugs or other therapies to treat erectile dysfunction by convicted sex offenders.

(b) Use or disclosure of the information disclosed pursuant to this section is prohibited for any purpose other than that authorized by this section or Section 14133.225 of the Welfare and Institutions Code. The Department of Justice may establish a fee for requests, including all actual and reasonable costs associated with the service.

(c) Notwithstanding any other provision of law, any state governmental entity that is responsible for authorizing or providing publicly funded prescription drugs or other therapies to treat erectile dysfunction may use the sex offender database authorized by Section 290.46 to protect public safety by preventing the use of those drugs or therapies for convicted sex offenders.

(Added by Stats.2005, c. 469 (A.B.522), § 2, eff. Oct. 4, 2005.)

Title 16 GENERAL PROVISIONS

§ 667.9. Conviction of certain crimes against persons 65 years of age or older, blind, deaf, developmentally disabled, paraplegic, quadriplegic, or under the age of 14 years; prior conviction; sentence enhancements

(a) Any person who commits one or more of the crimes specified in subdivision (c) against a person who is 65 years of age or older, or against a person who is blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or against a person who is under the age of 14 years, and that disability or condition is known or reasonably should be known to the person committing the crime, shall receive a one–year enhancement for each violation.

(b) Any person who commits a violation of subdivision (a) and who has a prior conviction for any of the offenses specified in subdivision (c), shall receive a two–year enhancement for each violation in addition to the sentence provided under Section 667.

(c) Subdivisions (a) and (b) apply to the following crimes:

(1) Mayhem, in violation of Section 203 or 205.

(2) Kidnapping, in violation of Section 207, 209, or 209.5.

(3) Robbery, in violation of Section 211.

(4) Carjacking, in violation of Section 215.

(5) Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261.

(6) Spousal rape, in violation of paragraph (1) or (4) of subdivision (a) of Section 262.

(7) Rape, spousal rape, or sexual penetration in concert, in violation of Section 264.1.

(8) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286.

(9) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a.

(10) Sexual penetration, in violation of subdivision (a) of Section 289.

(11) Burglary of the first degree, as defined in Section 460, in violation of Section 459.

(d) As used in this section, "developmentally disabled" means a severe, chronic disability of a person, which is all of the following:

(1) Attributable to a mental or physical impairment or a combination of mental and physical impairments.

(2) Likely to continue indefinitely.

(3) Results in substantial functional limitation in three or more of the following areas of life activity:

(A) Self–care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self–direction.

(F) Capacity for independent living.

(G) Economic self–sufficiency.

(Added by Stats.1985, c. 1086, § 2. Amended by Stats.1986, c. 1299, § 9; Stats.1987, c. 1462, § 1; Stats.1992, c. 265 (S.B.1288), § 2; Stats.1992, c. 741 (A.B.1611), § 1.5; Stats.1993, c. 610 (A.B.6), § 12, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 13, eff. Oct. 1, 1993; Stats.1994, c. 224 (S.B.1436), § 1; Stats.1994, c. 1188 (S.B.59), § 9; Stats.1999, c. 569 (A.B.313), § 1.)

PENAL CODE — CRIMINAL PROCEDURE

Part 2 OF CRIMINAL PROCEDURE

Title 3 ADDITIONAL PROVISIONS REGARDING CRIMINAL PROCEDURE

Chapter 4.5 PEACE OFFICERS

§ 830.3. Peace officers; employing agencies; authority

The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as specified by their employing agencies:

(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Medical Board of California and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(b) Voluntary fire wardens designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of this code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Inspectors of the food and drug section designated by the chief pursuant to subdivision (a) of Section 106500 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 106500 of that code.

(g) All investigators of the Division of Labor Standards Enforcement designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, and Alcohol and Drug Programs, the Department of Toxic Substances Control, the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department or office.

Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators designated by the chief, provided that the primary duty of those investigators shall be the enforcement of Section 550.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other law, except as authorized by the Controller, the peace officers designated pursuant to this subdivision shall not carry firearms.

(*l*) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be the enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The Chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(*o*) Investigators of the office of the Secretary of State designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and Section 12172.5 of, the Government Code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The chief and assistant chief of museum security and safety of the California Science Center, as designated by the executive director pursuant to Section 4108 of the Food and Agricultural Code, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 4108 of the Food and Agricultural Code.

(s) Employees of the Franchise Tax Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of the law as set forth in Chapter 9 (commencing with Section 19701) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(t) Notwithstanding any other provision of this section, a peace officer authorized by this section shall not be authorized to carry firearms by his or her employing agency until that agency has adopted a policy on the use of deadly force by those peace officers, and until those peace officers have been instructed in the employing agency's policy on the use of deadly force.

Every peace officer authorized pursuant to this section to carry firearms by his or her employing agency shall qualify in the use of the firearms at least every six months.

(u) Investigators of the Department of Managed Health Care designated by the Director of the Department of Managed Health Care, provided that the primary duty of these investigators shall be the enforcement of the provisions of laws administered by the Director of the Department of Managed Health Care. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(Added by Stats.1968, c. 1222, p. 2303, § 1. Amended by Stats.1969, c. 1511, p. 3090, § 1; Stats.1970, c. 468, p. 928, § 2; Stats.1970, c. 1454, p. 2867, § 4; Stats.1970, c. 1589, p. 3306, § 1; Stats.1970, c. 1591, p. 3318, § 1; Stats.1970, c. 1592, p. 3322, § 3; Stats.1971, c. 631, p. 1236, § 3; Stats.1971, c. 632, p. 1245, § 3; Stats.1971, c. 701, p. 1358, § 2; Stats.1971, c. 716, p. 1437, § 203; Stats.1971, c. 1695, p. 3634, § 1; Stats.1972, c. 618, p. 1139, § 117; Stats.1972, c. 1377, p. 2832, § 71; Stats.1974, c. 639, p. 1493, § 2; Stats.1974, c. 1403, p. 3072, § 12; Stats.1975, 2nd Ex.Sess., c. 2, p. 4004, § 10.5, eff. Sept. 24, 1975, operative Dec. 12, 1975; Stats.1976, c. 42, p. 1017, § 1; Stats.1976, c. 1406, p. 6325, § 1; Stats.1976, c. 1435, p. 6328, § 3; Stats.1977, c. 1252, p. 4436, § 359, operative July 1, 1978; Stats.1977, c. 220, p. 1014, § 2; Stats.1978, c. 429, p. 1416, § 157.5, eff. July 17, 1978, operative July 1, 1978; Stats.1978, c. 1138, p. 3494, § 1; Stats.1979, c. 573, p. 1799, § 3; Stats.1980, c. 10, p. 53, § 2, eff. Feb. 12, 1980; Stats.1980, c. 676, p. 1981, § 250; Stats.1980, c. 1340, p. 4721, § 7, eff. Sept. 30, 1980; Stats.1981, c. 973, p. 3709, § 1; Stats.1981, c. 975, p. 3789, § 22; Stats.1982, c. 548, p. 2491, § 2.5, eff. Aug. 24, 1982; Stats.1982, c. 1277, p. 4721, § 4; Stats.1984, c. 57, § 1, eff. March 28, 1984; Stats.1984, c. 940, § 1; Stats.1985, c. 1241, § 1, eff. Sept. 30, 1985; Stats.1986, c. 898, § 2; Stats.1988, c. 685, § 1; Stats.1988, c. 1552, § 2; Stats.1989, c. 886, § 101; Stats.1989, c. 1165, § 22; Stats.1989, c. 1166, § 3; Stats.1990, c. 82 (S.B.655), § 8, eff. May 3, 1990; Gov.Reorg.Plan No. 1 of 1991, § 152, eff. July 17, 1991; Stats.1991, c. 877 (A.B.1196), § 2; Stats.1991, c. 910 (S.B.249), § 5; Stats.1993, c. 409 (A.B.2308), § 2, eff. Sept. 17, 1993; Stats.1996, c. 1023 (S.B.1497), § 390, eff. Sept. 29, 1996; Stats.1996, c. 841 (A.B.3220), § 16; Stats.1997, c. 670 (S.B.951), § 1.5; Stats.1997, c. 704 (S.B.826), § 7; Stats.1998, c. 485 (A.B.2803), § 132; Stats.1999, c. 525 (A.B.78), § 191; Stats.1999, c. 840 (A.B.900), § 2, eff. Oct. 10, 1999; Stats.2000, c. 857 (A.B.2903), § 78; Stats.2003, c. 788 (S.B.362), § 80.)

§ 830.38. State hospital officer

The officers of a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services appointed pursuant to Section 4313 or 4493 of the Welfare and Institutions Code, are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code provided that the primary duty of the peace officers shall be the enforcement of the law as set forth in Sections 4311, 4313, 4491, and 4493 of the Welfare and Institutions Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(Added by Stats.1989, c. 1165, § 30.5.)

§ 830.5. Parole and probation officers; correctional or medical facility employees; firearms

The following persons are peace officers whose authority extends to any place in the state while engaged in the performance of the duties of their respective employment and for the purpose of carrying out the primary function of their employment or as required under Sections

8597, 8598, and 8617 of the Government Code. Except as specified in this section, these peace officers may carry firearms only if authorized and under those terms and conditions specified by their employing agency:

(a) A parole officer of the Department of Corrections or the Department of the Youth Authority, probation officer, deputy probation officer, or a board coordinating parole agent employed by the Youthful Offender Parole Board. Except as otherwise provided in this subdivision, the authority of these parole or probation officers shall extend only as follows:

(1) To conditions of parole or of probation by any person in this state on parole or probation.

(2) To the escape of any inmate or ward from a state or local institution.

(3) To the transportation of persons on parole or probation.

(4) To violations of any penal provisions of law which are discovered while performing the usual or authorized duties of his or her employment.

(5) To the rendering of mutual aid to any other law enforcement agency.

For the purposes of this subdivision, "parole agent" shall have the same meaning as parole officer of the Department of Corrections or of the Department of the Youth Authority.

Any parole officer of the Department of Corrections, the Department of the Youth Authority, or the Youthful Offender Parole Board is authorized to carry firearms, but only as determined by the director on a case–by–case or unit–by–unit basis and only under those terms and conditions specified by the director or chairperson. The Department of the Youth Authority shall develop a policy for arming peace officers of the Department of the Youth Authority who comprise "high–risk transportation details" or "high–risk escape details" no later than June 30, 1995. This policy shall be implemented no later than December 31, 1995.

The Department of the Youth Authority shall train and arm those peace officers who comprise tactical teams at each facility for use during "high–risk escape details."

(b) A correctional officer employed by the Department of Corrections or any employee of the Department of the Youth Authority having custody of wards or the Inspector General of the Youth and Adult Correctional Agency or any internal affairs investigator under the authority of the Inspector General or any employee of the Department of Corrections designated by the Director of Corrections or any correctional counselor series employee of the Department of Corrections or any medical technical assistant series employee designated by the Director of Corrections or designated by the Director of Corrections and employed by the State Department of Mental Health or employee of the Board of Prison Terms designated by the Secretary of the Youth and Adult Correctional Agency or employee of the Department of the Youth Authority designated by the Director of the Youth Authority or any superintendent, supervisor, or employee having custodial responsibilities in an institution operated by a probation department, or any transportation officer of a probation department.

(c) The following persons may carry a firearm while not on duty: a parole officer of the Department of Corrections or the Department of the Youth Authority, a correctional officer or correctional counselor employed by the Department of Corrections or any employee of the Department of the Youth Authority having custody of wards or any employee of the Department of Corrections designated by the Director of Corrections. A parole officer of the Youthful Offender Parole Board may carry a firearm while not on duty only when so authorized by the chairperson of the board and only under the terms and conditions specified by the chairperson. Nothing in this section shall be interpreted to require licensure pursuant to Section 12025. The director or chairperson may deny, suspend, or revoke for good cause a person's right to carry a firearm under this subdivision. That person shall, upon request, receive a hearing, as provided for in the negotiated grievance procedure between the exclusive employee representative and the Department of Corrections, the Department of the Youth Authority, or the Youthful Offender Parole Board, to review the director's or the chairperson's decision.

(d) Persons permitted to carry firearms pursuant to this section, either on or off duty, shall meet the training requirements of Section 832 and shall qualify with the firearm at least quarterly. It is the responsibility of the individual officer or designee to maintain his or her eligibility to carry concealable firearms off duty. Failure to maintain quarterly qualifications by an officer or designee with any concealable firearms carried off duty shall constitute good cause to suspend or revoke that person's right to carry firearms off duty.

(e) The Department of Corrections shall allow reasonable access to its ranges for officers and designees of either department to qualify to carry concealable firearms off duty. The time spent on the range for purposes of meeting the qualification requirements shall be the person's own time during the person's off–duty hours.

(f) The Director of Corrections shall promulgate regulations consistent with this section.

(g) "High–risk transportation details" and "high–risk escape details" as used in this section shall be determined by the Director of the Youth Authority, or his or her designee. The director, or his or her designee, shall consider at least the following in determining "high–risk transportation details" and "high–risk escape details": protection of the public, protection of officers, flight risk, and violence potential of the wards.

(h) "Transportation detail" as used in this section shall include transportation of wards outside the facility, including, but not limited to, court appearances, medical trips, and interfacility transfers.

(Added by Stats.1968, c. 1222, p. 2307, § 1. Amended by Stats.1969, c. 645, p. 1297, § 1; Stats.1972, c. 198, p. 420, § 3; Stats.1978, c. 642, p. 2102, § 1; Stats.1980, c. 616, p. 1697, § 1; Stats.1980, c. 1340, p. 4725, § 13, eff. Sept. 30, 1980; Stats.1981, c. 1142, p. 4535, § 5; Stats.1982, c. 1086, p. 3958, § 1; Stats.1984, c. 702, § 1, eff. Aug. 23, 1984; Stats.1988, c. 386, § 1.5, eff. Aug. 8, 1988; Stats.1988, c. 942, § 1; Stats.1989, c. 1165, § 33; Stats.1990, c. 1194 (A.B.3905), § 1; Stats.1992, c. 882 (A.B.3603), § 2; Stats.1994, c. 465 (S.B.1756), § 1; Stats.1998, c. 338 (S.B.295), § 3, eff. Aug. 21, 1998; Stats.2001, c. 119 (S.B.890), § 1; Stats.2002, c. 1124 (A.B.3000), § 44, eff. Sept. 30, 2002.)

§ 832.05. Emotional and mental examinations for evaluation of recruits or officers; examiner qualifications

(a) Each state or local department or agency that employs peace officers shall utilize a person meeting the requirements set forth in subdivision (f) of Section 1031 of the Government Code, applicable to emotional and mental examinations, for any emotional and mental evaluation done in the course of the department or agency's screening of peace officer recruits or the evaluation of peace officers to determine their fitness for duty.

(b) This section shall become operative on January 1, 2005.

(Added by Stats.2003, c. 777 (A.B.1669), § 5, operative Jan. 1, 2005.)

Title 6 PLEADINGS AND PROCEEDINGS BEFORE TRIAL

Chapter 2.65 CHILD ABUSE AND NEGLECT COUNSELING

§ 1000.12. Legislative intent; referral to counseling or psychological treatment in lieu of prosecution; deferral of judgment in lieu of trial; dismissal of charges; eligibility standards

(a) It is the intent of the Legislature that nothing in this chapter deprive a prosecuting attorney of the ability to prosecute any person who is suspected of committing any crime in which a minor is a victim of an act of * * * physical abuse * * * or neglect to the fullest extent of the law, if the prosecuting attorney so chooses.

(b) * * * In lieu of prosecuting a person suspected of committing any crime, involving a minor victim, of an act of physical abuse or neglect, the prosecuting attorney may refer that person to the county department in charge of public social services or the probation department for counseling or psychological treatment and such other services as the department deems necessary. The prosecuting attorney shall seek the advice of the county department in charge of public social services or the probation department in determining whether or not to make the referral.

* * *

* * * (c) This section shall not apply to any person who is charged * * * with sexual abuse or molestation of a minor victim, or any sexual offense involving force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the minor victim or another person.

* * *

(Added by Stats.1983, c. 804, § 2. Amended by Stats.1985, c. 1262, § 1; Stats.1993–94, 1st Ex.Sess., c. 49 (S.B.38), § 1; Stats.1995, c. 935 (S.B.816), § 3; Stats.2005, c. 477 (S.B.33), § 3.)

Chapter 2.8 DIVERSION OF DEFENDANTS WITH COGNITIVE DEVELOPMENTAL DISABILITIES

§ 1001.20. Definitions

As used in this chapter:

(a) "Cognitive Developmental Disability" means any of the following:

(1) "Mental retardation," meaning a condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(2) "Autism," meaning a diagnosed condition of markedly abnormal or impaired development in social interaction, in communication, or in both, with a markedly restricted repertoire of activity and interests.

(3) Disabling conditions found to be closely related to mental retardation or autism, or that require treatment similar to that required for individuals with mental retardation or autism, and that would qualify an individual for services provided under the Lanterman Developmental Disabilities Services Act.

(b) "Diversion–related treatment and habilitation" means, but is not limited to, specialized services or special adaptations of generic services, directed towards the alleviation of cognitive developmental disability or towards social, personal, physical, or economic habilitation or rehabilitation of an individual with a cognitive developmental disability, and includes, but is not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, sheltered employment, mental health services, recreation, counseling of the individual with this disability and of his or her family, protective and other social and socio–legal services, information and referral services, follow–along services, and transportation services necessary to assure delivery of services to persons with cognitive developmental disabilities.

(c) "Regional center" means a regional center for the developmentally disabled established under the Lanterman Developmental Disabilities Services Act that is organized as a private nonprofit community agency to plan, purchase, and coordinate the delivery of services which cannot be provided by state agencies to developmentally disabled persons residing in a particular geographic catchment area, and which is licensed and funded by the State Department of Developmental Services.

(d) "Director of a regional center" means the executive director of a regional center for the developmentally disabled or his or her designee.

(e) "Agency" means the prosecutor, the probation department, and the regional center involved in a particular defendant's case.

(f) "Dual agency diversion" means a treatment and habilitation program developed with court approval by the regional center, administered jointly by the regional center and by the probation department, which is individually tailored to the needs of the defendant as derived from the defendant's individual program plan pursuant to Section 4646 of the Welfare and Institutions Code, and which includes, but is not limited to, treatment specifically addressed to the criminal offense charged, for a specified period of time as prescribed in Section 1001.28.

(g) "Single agency diversion" means a treatment and habilitation program developed with court approval by the regional center, administered solely by the regional center without involvement by the probation department, which is individually tailored to the needs of the defendant as derived from the defendant's individual program plan pursuant to Section 4646 of the Welfare and Institutions Code, and which includes, but is not limited to, treatment specifically addressed to the criminal offense charged, for a specified period of time as prescribed in Section 1001.28.

(Added by Stats.1980, c. 1253, p. 4232, § 1. Amended by Stats.2004, c. 290 (A.B.1956), § 2.)

§ 1001.21. Applicability of chapter

(a) This chapter shall apply whenever a case is before any court upon an accusatory pleading at any stage of the criminal proceedings, for any person who has been evaluated by a regional center for the developmentally disabled and who is determined to be a person with a cognitive developmental disability by the regional center, and who therefore is eligible for its services.

(b) This chapter applies to any offense which is charged as or reduced to a misdemeanor, except that diversion shall not be ordered when the defendant previously has been diverted under this chapter within two years prior to the present criminal proceedings.

(c) This chapter shall apply to persons who have a condition described in paragraph (2) or (3) of subdivision (a) of Section 1001.20 only if that person was a client of a regional center at the time of the offense for which he or she is charged.

(Added by Stats.1980, c. 1253, p. 4233, § 1. Amended by Stats.2004, c. 290 (A.B.1956), § 3.)

§ 1001.22. Consultation by court; appointment of counsel; reports of prosecutor, probation department, and regional center

The court shall consult with the prosecutor, the defense counsel, the probation department, and the appropriate regional center in order to determine whether a defendant may be diverted pursuant to this chapter. If the defendant is not represented by counsel, the court shall appoint counsel to represent the defendant. When the court suspects that a defendant may have a cognitive developmental disability, as defined in subdivision (a) of Section 1001.20, and the defendant consents to the diversion process and to his or her case being evaluated for eligibility for regional center services, and waives his or her right to a speedy trial, the court shall order the prosecutor, the probation department, and the regional center to prepare reports on specified aspects of the defendant's case. Each report shall be prepared concurrently.

(a) The regional center shall submit a report to the probation department within 25 judicial days of the court's order. The regional center's report shall include a determination as to whether the defendant has a cognitive developmental disability and is eligible for regional center diversion–related treatment and habilitation services, and the regional center shall also submit to the court a proposed diversion program, individually tailored to the needs of the defendant as derived from the defendant's individual program plan pursuant to Section 4646 of the Welfare and Institutions Code, which shall include, but not be limited to, treatment addressed to the criminal offense charged for a period of time as prescribed in Section 1001.28. The regional center's report shall also contain a statement whether such a proposed program is available for the defendant through the

treatment and habilitation services of the regional centers pursuant to Section 4648 of the Welfare and Institutions Code.

(b) The prosecutor shall submit a report on specified aspects of the defendant's case, within 30 judicial days of the court's order, to the court, to each of the other agencies involved in the case, and to the defendant. The prosecutor's report shall include all of the following:

(1) A statement of whether the defendant's record indicates the defendant's diversion pursuant to this chapter within two years prior to the alleged commission of the charged divertible offense.

(2) If the prosecutor recommends that this chapter may be applicable to the defendant, he or she shall recommend either a dual or single agency diversion program and shall advise the court, the probation department, the regional center, and the defendant, in writing, of that determination within 20 judicial days of the court's order to prepare the report.

(3) If the prosecutor recommends against diversion, the prosecutor's report shall include a declaration in writing to state for the record the grounds upon which the recommendation was made, and the court shall determine, pursuant to Section 1001.23, whether the defendant shall be diverted.

(4) If dual agency diversion is recommended by the prosecutor, a copy of the prosecutor's report shall also be provided by the prosecutor to the probation department, the regional center, and the defendant within the above prescribed time period. This notification shall include all of the following:

(A) A full description of the proceedings for diversion and the prosecutor's investigation procedures.

(B) A general explanation of the role and authority of the probation department, the prosecutor, the regional center, and the court in the diversion program process.

(C) A clear statement that the court may decide in a hearing not to divert the defendant and that he or she may have to stand trial for the alleged offense.

(D) A clear statement that should the defendant fail in meeting the terms of his or her diversion, or if, during the period of diversion the defendant is subsequently charged with a felony, the defendant may be required, after a hearing, to stand trial for the original diverted offense.

(c) The probation department shall submit a report on specified aspects of the defendant's case within 30 judicial days of the court's order, to the court, to each of the other agencies involved in the case, and to the defendant. The probation department's report to the court shall be based upon an investigation by the probation department and consideration of the defendant's age, cognitive developmental disability, employment record, educational background, ties to community agencies and family, treatment history, criminal record if any, and demonstrable motivation and other mitigating factors in determining whether the defendant is a person who would benefit from a diversion–related treatment and habilitation program. The regional center's report in full shall be appended to the probation department's report to the court.

(Added by Stats.1980, c. 1253, p. 4234, § 1. Amended by Stats.2004, c. 290 (A.B.1956), § 4.)

§ 1001.23. Reinstitution of suspended criminal proceedings or implementation of diversion program; orders; dual or single agency supervision; report

(a) Upon the court's receipt of the reports from the prosecutor, the probation department, and the regional center, and a determination by the regional center that the defendant does not have a cognitive developmental disability, the criminal proceedings for the offense charged shall proceed. If the defendant is found to have a cognitive developmental disability and to be eligible for regional center services, and the court determines from the various reports submitted to it that the proposed diversion program is acceptable to the court, the prosecutor, the probation department, and the regional center, and if the defendant consents to diversion and waives his or her right to a speedy trial, the court may order, without a hearing, that the diversion program be implemented for a period of time as prescribed in Section 1001.28.

(b) After consideration of the probation department's report, the report of the regional center, and the report of the prosecutor relating to his or her recommendation for or against diversion, and any other relevant information, the court shall determine if the defendant shall be diverted under either dual or single agency supervision, and referred for habilitation or rehabilitation diversion pursuant to this chapter. If the court does not deem the defendant a person who would benefit by diversion at the time of the hearing, the suspended criminal proceedings may be reinstituted, or any other disposition as authorized by law may be made, and diversion may be ordered at a later date.

(c) Where a dual agency diversion program is ordered by the court, the regional center shall submit a report to the probation department on the defendant's progress in the diversion program not less than every six months. Within five judicial days after receiving the regional center's report, the probation department shall submit its report on the defendant's progress in the diversion program, with the full report of the regional center appended, to the court and to the prosecutor. Where single agency diversion is ordered by the court, the regional center alone shall report the defendant's progress to the court and to the prosecutor not less than every six months.

(Added by Stats.1980, c. 1253, p. 4235, § 1. Amended by Stats.2004, c. 290 (A.B.1956), § 5.)

§ 1001.24. Admissibility of statement or information procured from defendant during course of investigation

No statement, or information procured therefrom, made by the defendant to any probation officer, the prosecutor, or any regional center designee during the course of the investigation conducted by either the regional center or the probation department pursuant to this chapter, and prior to the reporting to the probation department of the regional center's findings of eligibility and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to this investigation.

(Added by Stats.1980, c. 1253, p. 4236, § 1.)

§ 1001.25. Admissibility of statement or information procured from defendant subsequent to granting diversion

No statement, or information procured therefrom, with respect to the specific offense with which the defendant is charged, which is made to a probation officer, a prosecutor, or a regional center designee subsequent to the granting of diversion shall be admissible in any action or proceeding brought subsequent to the investigation.

(Added by Stats.1980, c. 1253, p. 4236, § 1.)

§ 1001.26. Use of probation investigation, statements or information divulged by defendant in sentencing procedures

In the event that diversion is either denied or is subsequently revoked once it has been granted, neither the probation investigation nor the statements or other information divulged by the defendant during the investigation by the probation department or the regional center shall be used in any sentencing procedures.

(Added by Stats.1980, c. 1253, p. 4236, § 1.)

§ 1001.27. Exoneration of bail, bond, undertaking, or deposit

At such time as the defendant's case is diverted, any bail, bond, or undertaking, or deposit in lieu thereof, on file or on behalf of the defendant shall be exonerated, and the court shall enter an order so directing.

(Added by Stats.1980, c. 1253, p. 4236, § 1.)

§ 1001.28. Time of diversion; progress reports

The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years. The

responsible agency or agencies shall file reports on the defendant's progress in the diversion program with the court and with the prosecutor not less than every six months.

(a) Where dual agency diversion has been ordered, the probation department shall be responsible for the progress reports. The probation department shall append to its own report a copy of the regional center's assessment of the defendant's progress.

(b) Where single agency diversion has been ordered, the regional center alone shall be responsible for the progress reports.

(Added by Stats.1980, c. 1253, p. 4236, § 1.)

§ 1001.29. Modification of diversion order; reinstitution of criminal proceedings; hearing; notice; subsequent felony charge

If it appears that the divertee is not meeting the terms and conditions of his or her diversion program, the court may hold a hearing and amend such program to provide for greater supervision by the responsible regional center alone, by the probation department alone, or by both the regional center and the probation department. However, notwithstanding any such modification of a diversion order, the court may hold a hearing to determine whether the diverted criminal proceedings should be reinstituted if it appears that the divertee's performance in the diversion program is unsatisfactory, or if the divertee is subsequently charged with a felony during the period of diversion.

(a) In cases of dual agency diversion, a hearing to reinstitute the diverted criminal proceedings may be initiated by either the court, the prosecutor, the regional center, or the probation department.

(b) In cases of single agency diversion, a hearing to reinstitute the diverted criminal proceedings may be initiated only by the court, the prosecutor, or the regional center.

(c) No hearing for either of these purposes shall be held unless the moving agency or the court has given the divertee prior notice of the hearing.

(d) Where the cause of the hearing is a subsequent charge of a felony against the divertee subsequent to the diversion order, any hearing to reinstitute the diverted criminal proceedings shall be delayed until such time as probable cause has been established in court to bind the defendant over for trial on the subsequently charged felony.

(Added by Stats.1980, c. 1253, p. 4237, § 1.)

§ 1001.30. Withdrawal of consent by defendant

At any time during which the defendant is participating in a diversion program, he or she may withdraw consent to further participate in the diversion program, and at such time as such consent is withdrawn, the suspended criminal proceedings may resume or such other disposition may be made as is authorized by law.

(Added by Stats.1980, c. 1253, p. 4237, § 1.)

§ 1001.31. Dismissal of criminal charges

If the divertee has performed satisfactorily during the period of diversion, the criminal charges shall be dismissed at the end of the diversion period.

(Added by Stats.1980, c. 1253, p. 4237, § 1.)

§ 1001.32. Records to indicate disposition of cases

Any record filed with the State Department of Justice shall indicate the disposition of those cases diverted pursuant to this chapter.

(Added by Stats.1980, c. 1253, p. 4237, § 1.)

§ 1001.33. Successful completion of program; record; disclosure of arrest

(a) Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The divertee shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request and that, notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(Added by Stats.1980, c. 1253, p. 4237, § 1. Amended by Stats.1993, c. 785 (S.B.1206), § 4; Stats.1996, c. 743 (A.B.3098), § 3.)

§ 1001.34. Implementation of diversion–related individual program plan

Notwithstanding any other provision of law, the diversion–related individual program plan shall be fully implemented by the regional centers upon court order and approval of the diversion–related treatment and habilitation plan.

(Added by Stats.1980, c. 1253, p. 4238, § 1.)

Chapter 4 PLEA

§ 1016. Kinds of pleas; entry of multiple plea; presumption of sanity; change of plea; admission by plea of not guilty by reason of insanity without pleading not guilty

There are six kinds of pleas to an indictment or an information, or to a complaint charging a misdemeanor or infraction:

1. Guilty.

2. Not guilty.

3 Nolo contendere, subject to the approval of the court. The court shall ascertain whether the defendant completely understands that a plea of nolo contendere shall be considered the same as a plea of guilty and that, upon a plea of nolo contendere, the court shall find the defendant guilty. The legal effect of such a plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes. In cases other than those punishable as felonies, the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, and factual basis for, the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.

4. A former judgment of conviction or acquittal of the offense charged.

5. Once in jeopardy.

6. Not guilty by reason of insanity.

A defendant who does not plead guilty may enter one or more of the other pleas. A defendant who does not plead not guilty by reason of insanity shall be conclusively presumed to have been sane at the time of the commission of the offense charged; provided, that the court may for good cause shown allow a change of plea at any time before the commencement of the trial. A defendant who pleads not guilty by reason of insanity, without also pleading not guilty, thereby admits the commission of the offense charged.

(Enacted 1872. Amended by Code Am.1880, c. 118, p. 44, § 2; Stats.1927, c. 677, p. 1148, § 1; Stats.1951, c. 1674, p. 3843, § 81; Stats.1963, c. 2128, p. 4418, § 1; Stats.1975, c. 687, p. 1635, § 1; Stats.1976, c. 1088, p. 4930, § 1; Stats.1982, c. 390, p. 1725, § 3; Stats.1998, c. 931 (S.B.2139), § 385, eff. Sept. 28, 1998.)

§ 1016.5. Advisement concerning status as alien; reconsideration of plea; effect of noncompliance

(a) Prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall administer the following advisement on the record to the defendant:

If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(b) Upon request, the court shall allow the defendant additional time to consider the appropriateness of the plea in light of the advisement as described in this section. If, after January 1, 1978, the court fails to advise the defendant as required by this section and the defendant shows that conviction of the offense to which defendant pleaded guilty or nolo contendere may have the consequences for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States, the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty. Absent a record that the court provided the advisement required by this section, the defendant shall be presumed not to have received the required advisement.

(c) With respect to pleas accepted prior to January 1, 1978, it is not the intent of the Legislature that a court's failure to provide the advisement required by subdivision (a) of Section 1016.5 should require the vacation of judgment and withdrawal of the plea or constitute grounds for finding a prior conviction invalid. Nothing in this section, however, shall be deemed to inhibit a court, in the sound exercise of its discretion, from vacating a judgment and permitting a defendant to withdraw a plea.

(d) The Legislature finds and declares that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable as a crime under state law, a plea of guilty or nolo contendere is entered without the defendant knowing that a conviction of such offense is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Therefore, it is the intent of the Legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea or plea of nolo contendere be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea. It is also the intent of the Legislature that the court in such cases shall grant the defendant a reasonable amount of time to negotiate with the prosecuting agency in the event the defendant or the defendant's counsel was unaware of the possibility of deportation, exclusion from admission to the United States, or denial of naturalization as a result of conviction. It is further the intent of the Legislature that at the time of the plea no defendant shall be required to disclose his or her legal status to the court.

(Added by Stats.1977, c. 1088, p. 3495, § 1.)

§ 1017. Place, form, and entry of plea

Every plea must be made in open court and, may be oral or in writing, shall be entered upon the minutes of the court, and shall be taken down in shorthand by the official reporter if one is present. All pleas of guilty or nolo contendere to misdemeanors or felonies shall be oral or in writing. The plea, whether oral or in writing, shall be in substantially the following form:

1. If the defendant plead guilty: "The defendant pleads that he or she is guilty of the offense charged."

2. If he or she plead not guilty: "The defendant pleads that he or she is not guilty of the offense charged."

3. If he or she plead a former conviction or acquittal: "The defendant pleads that he or she has already been convicted (or acquitted) of the offense charged, by the judgment of the court of _____ (naming it), rendered at _____ (naming the place), on the _____ day of _____."

4. If he or she plead once in jeopardy: "The defendant pleads that he or she has been once in jeopardy for the offense charged (specifying the time, place, and court)."

5. If he or she plead not guilty by reason of insanity: "The defendant pleads that he or she is not guilty of the offense charged because he or she was insane at the time that he or she is alleged to have committed the unlawful act."

(Enacted 1872. Amended by Code Am.1880, c. 118, p. 44, § 3; Stats. 1927, c. 677, p. 1149, § 2; Stats.1933, c. 763, p. 2023, § 3; Stats.1951, c. 1674, p. 3843, § 82; Stats.1990, c. 632 (A.B.125), § 2.)

§ 1018. Defendant to plead in person; refusal of certain pleas; change of plea; corporate defendants; construction of section

Unless otherwise provided by law, every plea shall be entered or withdrawn by the defendant himself or herself in open court. No plea of guilty of a felony for which the maximum punishment is death, or life imprisonment without the possibility of parole, shall be received from a defendant who does not appear with counsel, nor shall that plea be received without the consent of the defendant's counsel. No plea of guilty of a felony for which the maximum punishment is not death or life imprisonment without the possibility of parole shall be accepted from any defendant who does not appear with counsel unless the court shall first fully inform him or her of the right to counsel and unless the court shall find that the defendant understands the right to counsel and freely waives it, and then only if the defendant has expressly stated in open court, to the court, that he or she does not wish to be represented by counsel. On application of the defendant at any time before judgment or within six months after an order granting probation is made if entry of judgment is suspended, the court may, and in case of a defendant who appeared without counsel at the time of the plea the court shall, for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted. Upon indictment or information against a corporation a plea of guilty may be put in by counsel. This section shall be liberally construed to effect these objects and to promote justice.

(Enacted 1872. Amended by Code Am.1880, c. 47, p. 19, § 51; Stats.1949, c. 1310, p. 2298, § 1; Stats.1951, c. 858, p. 2369, § 1; Stats.1973, c. 718, p. 1295, § 1; Stats.1973, c. 719, p. 1301, § 11; Stats.1976, c. 819, p. 1887, § 1; Stats.1977, c. 316, p. 1263, § 17, eff. Aug. 11, 1977; Stats.1990, c. 632 (A.B.125), § 3; Stats.1991, c. 421 (A.B.2174), § 1.)

§ 1019. Plea of not guilty; issues

The plea of not guilty puts in issue every material allegation of the accusatory pleading, except those allegations regarding previous convictions of the defendant to which an answer is required by Section 1025.

(Enacted 1872. Amended by Code Am.1880, c. 47, p. 19, § 52; Stats.1951, c. 1674, p. 3844, § 83.)

§ 1020. Plea of not guilty; evidence admissible; exceptions

All matters of fact tending to establish a defense other than one specified in the fourth, fifth, and sixth subdivisions of Section 1016, may be given in evidence under the plea of not guilty.

(Enacted 1872. Amended by Code Am.1880, c. 118, p. 44, § 4; Stats.1905, c. 574, p. 773, § 5; Stats.1927, c. 677, p. 1149, § 3; Stats.1968, c. 122, p. 335, § 4.)

§ 1021. Former acquittal not on the merits; not acquittal of same offense

If the defendant was formerly acquitted on the ground of variance between the accusatory pleading and the proof or the accusatory pleading was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

(Enacted 1872. Amended by Code Am.1880, c. 47, p. 19, § 53; Stats.1951, c. 1674, p. 3844, § 84.)

§ 1022. Former acquittal on the merits; acquittal of same offense

Whenever the defendant is acquitted on the merits, he is acquitted of the same offense, notwithstanding any defect in form or substance in the accusatory pleading on which the trial was had.

(Enacted 1872. Amended by Code Am.1880, c. 47, p. 19, § 54; Stats.1951, c. 1674, p. 3844, § 85.)

§ 1023. Conviction, acquittal, or jeopardy; bar to subsequent prosecution

When the defendant is convicted or acquitted or has been once placed in jeopardy upon an accusatory pleading, the conviction, acquittal, or jeopardy is a bar to another prosecution for the offense charged in such accusatory pleading, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that accusatory pleading.

(Enacted 1872. Amended by Code Am.1880, c. 118, p. 45, § 5; Stats.1951, c. 1674, p. 3844, § 86.)

§ 1024. Plea of not guilty; entry on refusal to answer charge

If the defendant refuses to answer the accusatory pleading, by demurrer or plea, a plea of not guilty must be entered.

(Enacted 1872. Amended by Code Am.1880, c. 47, p. 19, § 55; Stats. 1951, c. 1674, p. 3844, § 87.)

§ 1025. Charge of prior conviction; answer; entry in minutes; refusal to answer; trial by jury or court; use of prior convictions at trial

(a) When a defendant who is charged in the accusatory pleading with having suffered a prior conviction pleads either guilty or not guilty of the offense charged against him or her, he or she shall be asked whether he or she has suffered the prior conviction. If the defendant enters an admission, his or her answer shall be entered in the minutes of the court, and shall, unless withdrawn by consent of the court, be conclusive of the fact of his or her having suffered the prior conviction in all subsequent proceedings. If the defendant enters a denial, his or her answer shall be entered in the minutes of the court. The refusal of the defendant to answer is equivalent to a denial that he or she has suffered the prior conviction.

(b) Except as provided in subdivision (c), the question of whether or not the defendant has suffered the prior conviction shall be tried by the jury that tries the issue upon the plea of not guilty, or in the case of a plea of guilty or nolo contendere, by a jury impaneled for that purpose, or by the court if a jury is waived.

(c) Notwithstanding the provisions of subdivision (b), the question of whether the defendant is the person who has suffered the prior conviction shall be tried by the court without a jury.

(d) Subdivision (c) shall not apply to prior convictions alleged pursuant to Section 190.2 or to prior convictions alleged as an element of a charged offense.

(e) If the defendant pleads not guilty, and answers that he or she has suffered the prior conviction, the charge of the prior conviction shall neither be read to the jury nor alluded to during trial, except as otherwise provided by law.

(f) Nothing in this section alters existing law regarding the use of prior convictions at trial.

(Added by Stats.1905, c. 574, p. 773, § 6. Amended by Stats.1951, c. 1674, p. 3844, § 88; Stats.1997, c. 95 (S.B.1146), § 1.)

§ 1026. Plea of insanity; separate trials; presumption of sanity; trial of sanity issue; verdict; sentence; confinement in state hospital or mental facility; outpatient status; restoration to sanity; transfers between facilities; reports by hospitals or facilities

(a) When a defendant pleads not guilty by reason of insanity, and also joins with it another plea or pleas, the defendant shall first be tried as if only such other plea or pleas had been entered, and in that trial the defendant shall be conclusively presumed to have been sane at the time the offense is alleged to have been committed. If the jury shall find the defendant guilty, or if the defendant pleads only not guilty by reason of insanity, then the question whether the defendant was sane or insane at the time the offense was committed shall be promptly tried, either before the same jury or before a new jury in the discretion of the court. In that trial, the jury shall return a verdict either that the defendant was sane at the time the offense was committed or was insane at the time the offense was committed. If the verdict or finding is that the defendant was sane at the time the offense was committed, the court shall sentence the defendant as provided by law. If the verdict or finding be that the defendant was insane at the time the offense was committed, the court, unless it shall appear to the court that the sanity of the defendant has been recovered fully, shall direct that the defendant be confined in a state hospital for the care and treatment of the mentally disordered or any other appropriate public or private treatment facility approved by the community program director, or the court may order the defendant placed on outpatient status pursuant to Title 15 (commencing with Section 1600) of Part 2.

(b) Prior to making the order directing that the defendant be confined in a state hospital or other treatment facility or placed on outpatient status, the court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be placed on outpatient status or confined in a state hospital or other treatment facility. No person shall be admitted to a state hospital or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee. If, however, it appears to the court that the sanity of the defendant has been recovered fully, the defendant shall be remanded to the custody of the sheriff until the issue of sanity shall have been finally determined in the manner prescribed by law. A defendant committed to a state hospital or other treatment facility or placed on outpatient status pursuant to Title 15 (commencing with Section 1600) of Part 2 shall not be released from confinement, parole, or outpatient status unless and until the court which committed the person shall, after notice and hearing, find and determine that the person's sanity has been restored. Nothing in this section shall prevent the transfer of the patient from one state hospital to any other state hospital by proper authority. Nothing in this section shall prevent the transfer of the patient to a hospital in another state in the manner provided in Section 4119 of the Welfare and Institutions Code.

(c) If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, order the defendant transferred to a state hospital or to another public or private treatment facility approved by the community program director. Where either the defendant or the prosecuting attorney chooses to contest either kind of order of transfer, a petition may be filed in the court requesting a hearing which shall be held if the court determines that sufficient grounds exist. At that hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same procedures and standards of proof as used in conducting probation revocation hearings pursuant to Section 1203.2.

(d) Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(e) When the court, after considering the placement recommendation of the community program director required in subdivision (b), orders that the defendant be confined in a state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined:

(1) The commitment order, including a specification of the charges.

(2) A computation or statement setting forth the maximum term of commitment in accordance with Section 1026.5.

(3) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(4) State Summary Criminal History information.

(5) Any arrest reports prepared by the police department or other law enforcement agency.

(6) Any court–ordered psychiatric examination or evaluation reports.

(7) The community program director's placement recommendation report.

(f) If the defendant is confined in a state hospital or other treatment facility as an inpatient, the medical director of the facility shall, at six–month intervals, submit a report in writing to the court and the community program director of the county of commitment, or a designee, setting forth the status and progress of the defendant. The court shall transmit copies of these reports to the prosecutor and defense counsel.

(g) When directing that the defendant be confined in a state hospital pursuant to subdivision (a), the court shall select the state hospital in accordance with the policies established by the State Department of Mental Health.

(h) For purposes of this section and Sections 1026.1 to 1026.6, inclusive, "community program director" means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 5709.8 of the Welfare and Institutions Code.

(Added by Stats.1927, c. 677, p. 1149, § 4. Amended by Stats.1935, c. 318, p. 1075, § 1.5; Stats.1974, c. 1423, p. 3125, § 1; Stats.1975, c. 1274, p. 3389, § 1; Stats.1977, c. 691, p. 2221, § 1; Stats.1978, c. 1291, p. 4222, § 1; Stats.1979, c. 1114, p. 4049, § 1, eff. Sept. 28, 1979; Stats.1980, c. 547, p. 1504, § 1; Stats.1984, c. 1192, § 1; Stats.1984, c. 1488, § 1.5; Stats.1985, c. 260, § 1; Stats.1985, c. 1232, § 1.5, eff. Sept. 30, 1985; Stats.1987, c. 828, § 61; Stats.1989, c. 625, § 1.)

§ 1026.1. Release; grounds

A person committed to a state hospital or other treatment facility under the provisions of Section 1026 shall be released from the state hospital or other treatment facility only under one or more of the following circumstances:

(a) Pursuant to the provisions of Section 1026.2.

(b) Upon expiration of the maximum term of commitment as provided in subdivision (a) of Section 1026.5, except as such term may be extended under the provisions of subdivision (b) of Section 1026.5.

(c) As otherwise expressly provided in Title 15 (commencing with Section 1600) of Part 2.

(Added by Stats.1980, c. 547, p. 1506, § 3. Amended by Stats.1984, c. 1488, § 2.)

§ 1026.2. Restoration to sanity; application for release of person who has been committed to state hospital or other treatment facility; requisites for and conduct of hearing; conditional release program and placement

(a) An application for the release of a person who has been committed to a state hospital or other treatment facility, as provided in Section 1026, upon the ground that sanity has been restored, may be made to the superior court of the county from which the commitment was made, either by the person, or by the medical director of the state hospital or other treatment facility to which the person is committed or by the community program director where the person is on outpatient status under Title 15 (commencing with Section 1600). The court shall give notice of the hearing date to the prosecuting attorney, the community program director or a designee, and the medical director or person in charge of the facility providing treatment to the committed person at least 15 judicial days in advance of the hearing date.

(b) Pending the hearing, the medical director or person in charge of the facility in which the person is confined shall prepare a summary of the person's programs of treatment and shall forward the summary to the community program director or a designee and to the court. The community program director or a designee shall review the summary and shall designate a facility within a reasonable distance from the court in which the person may be detained pending the hearing on the application for release. The facility so designated shall continue the program of treatment, shall provide adequate security, and shall, to the greatest extent possible, minimize interference with the person's program of treatment.

(c) A designated facility need not be approved for 72–hour treatment and evaluation pursuant to the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). However, a county jail may not be designated unless the services specified in subdivision (b) are provided and accommodations are provided which ensure both the safety of the person and the safety of the general population of the jail. If there is evidence that the treatment program is not being complied with or accommodations have not been provided which ensure both the safety of the committed person and the safety of the general population of the jail, the court shall order the person transferred to an appropriate facility or make any other appropriate order, including continuance of the proceedings.

(d) No hearing upon the application shall be allowed until the person committed has been confined or placed on outpatient status for a period of not less than 180 days from the date of the order of commitment.

(e) The court shall hold a hearing to determine whether the person applying for restoration of sanity would be a danger to the health and safety of others, due to mental defect, disease, or disorder, if under supervision and treatment in the community. If the court at the hearing determines the applicant will not be a danger to the health and safety of others, due to mental defect, disease, or disorder, while under supervision and treatment in the community, the court shall order the applicant placed with an appropriate forensic conditional release program for one year. All or a substantial portion of the program shall include outpatient supervision and treatment. The court shall retain jurisdiction. The court at the end of the one year, shall have a trial to determine if sanity has been restored, which means the applicant is no longer a danger to the health and safety of others, due to mental defect, disease, or disorder. The court shall not determine whether the applicant has been restored to sanity until the applicant has completed the one year in the appropriate forensic conditional release program, unless the community program director sooner makes a recommendation for restoration of sanity and unconditional release as described in subdivision (h). The court shall notify the persons required to be notified in subdivision (a) of the hearing date.

(f) If the applicant is on parole or outpatient status and has been on it for one year or longer, then it is deemed that the applicant has completed the required one year in an appropriate forensic conditional release program and the court shall, if all other applicable provisions of law have been met, hold the trial on restoration of sanity as provided for in this section.

(g) Before placing an applicant in an appropriate forensic

conditional release program, the community program director shall submit to the court a written recommendation as to what forensic conditional release program is the most appropriate for supervising and treating the applicant. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the court record. Sections 1605 to 1610, inclusive, shall be applicable to the person placed in the forensic conditional release program unless otherwise ordered by the court.

(h) If the court determines that the person should be transferred to an appropriate forensic conditional release program, the community program director or a designee shall make the necessary placement arrangements, and, within 21 days after receiving notice of the court finding, the person shall be placed in the community in accordance with the treatment and supervision plan, unless good cause for not doing so is made known to the court.

During the one year of supervision and treatment, if the community program director is of the opinion that the person is no longer a danger to the health and safety of others due to a mental defect, disease, or disorder, the community program director shall submit a report of his or her opinion and recommendations to the committing court, the prosecuting attorney, and the attorney for the person. The court shall then set and hold a trial to determine whether restoration of sanity and unconditional release should be granted. The trial shall be conducted in the same manner as is required at the end of one full year of supervision and treatment.

(i) If at the trial for restoration of sanity the court rules adversely to the applicant, the court may place the applicant on outpatient status, pursuant to Title 15 (commencing with Section 1600) of Part 2, unless the applicant does not meet all of the requirements of Section 1603.

(j) If the court denies the application to place the person in an appropriate forensic conditional release program or if restoration of sanity is denied, no new application may be filed by the person until one year has elapsed from the date of the denial.

(k) In any hearing authorized by this section, the applicant shall have the burden of proof by a preponderance of the evidence.

(*l*) If the application for the release is not made by the medical director of the state hospital or other treatment facility to which the person is committed or by the community program director where the person is on outpatient status under Title 15 (commencing with Section 1600), no action on the application shall be taken by the court without first obtaining the written recommendation of the medical director of the state hospital or other treatment facility or of the community program director where the person is on outpatient status under Title 15 (commencing with Section 1600).

(m) This subdivision shall apply only to persons who, at the time of the petition or recommendation for restoration of sanity, are subject to a term of imprisonment with prison time remaining to serve or are subject to the imposition of a previously stayed sentence to a term of imprisonment. Any person to whom this subdivision applies who petitions or is recommended for restoration of sanity may not be placed in a forensic conditional release program for one year, and a finding of restoration of sanity may be made without the person being in a forensic conditional release program for one year. If a finding of restoration of sanity is made, the person shall be transferred to the custody of the California Department of Corrections to serve the term of imprisonment remaining or shall be transferred to the appropriate court for imposition of the sentence that is pending, whichever is applicable.

(Formerly § 1026a, added by Stats.1927, c. 676, p. 1148, § 1. Amended by Stats.1935, c. 318, p. 1076, § 2; Stats.1957, c. 1766, p. 3160, § 1; Stats.1974, c. 1423, p. 3126, § 2; Stats.1975, c. 1274, p. 3391, § 2. Renumbered § 1026.2 and amended by Stats.1979, c. 1114, p. 4050, § 2, eff. Sept. 28, 1979. Amended by Stats.1980, c. 547, p. 1506, § 4; Stats.1982, c. 930, p. 3384, § 1; Stats.1984, c. 1416, § 1; Stats.1984, c. 1488, § 3.5; Stats.1985, c. 1232, § 2, eff. Sept. 30, 1985; Stats.1985, c. 1232, § 3, eff. Sept. 30, 1985, operative Jan. 1, 1989; Stats.1986, c. 549, § 1; Stats.1987, c. 1343, § 1; Stats.1987, c. 1343, § 2, operative Jan. 1, 1994; Stats.1991, c. 183 (A.B.1014), § 1; Stats.1993, c. 1141 (S.B.476), § 2; Stats.1993, c. 1141 (S.B.476), § 1, operative Jan. 1, 1995; Stats.1994, c. 1086 (S.B.1487), § 2; Stats.2003, c. 230 (A.B.1762), § 43, eff. Aug. 11, 2003.)

§ 1026.3. Outpatient status

A person committed to a state hospital or other treatment facility under Section 1026, and a person placed pursuant to subdivision (e) of Section 1026.2 as amended by Section 3.5 of Chapter 1488 of the Statutes of 1984, may be placed on outpatient status from the commitment as provided in Title 15 (commencing with Section 1600) of Part 2.

(Added by Stats.1980, c. 547, p. 1507, § 5. Amended by Stats.1984, c. 1488, § 4; Stats.1985, c. 260, § 2.)

§ 1026.4. Escape of one committed to mental health facility

(a) Every person committed to a state hospital or other public or private mental health facility pursuant to the provisions of Section 1026, who escapes from or who escapes while being conveyed to or from the state hospital or facility, is punishable by imprisonment in the county jail not to exceed one year or in a state prison for a determinate term of one year and one day. The term of imprisonment imposed pursuant to this section shall be served consecutively to any other sentence or commitment.

(b) The medical director or person in charge of a state hospital or other public or private mental health facility to which a person has been committed pursuant to the provisions of Section 1026 shall promptly notify the chief of police of the city in which the hospital or facility is located, or the sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the chief of police or sheriff in apprehending the person, and shall within 48 hours of the escape of the person orally notify the court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.

(Added by Stats.1981, c. 1054, p. 4069, § 1. Amended by Stats.1989, c. 568, § 1.)

§ 1026.5. Maximum term of commitment; facilities for temporary detention

(a)(1) In the case of any person committed to a state hospital or other treatment facility pursuant to Section 1026 or placed on outpatient status pursuant to Section 1604, who committed a felony on or after July 1, 1977, the court shall state in the commitment order the maximum term of commitment, and the person may not be kept in actual custody longer than the maximum term of commitment, except as provided in this section. For the purposes of this section, "maximum term of commitment" shall mean the longest term of imprisonment which could have been imposed for the offense or offenses of which the person was convicted, including the upper term of the base offense and any additional terms for enhancements and consecutive sentences which could have been imposed less any applicable credits as defined by Section 2900.5, and disregarding any credits which could have been earned pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3.

(2) In the case of a person confined in a state hospital or other treatment facility pursuant to Section 1026 or placed on outpatient status pursuant to Section 1604, who committed a felony prior to July 1, 1977, and who could have been sentenced under Section 1168 or 1170 if the offense was committed after July 1, 1977, the Board of Prison Terms shall determine the maximum term of commitment which could have been imposed under paragraph (1), and the person may not be kept in actual custody longer than the maximum term of commitment, except as provided in subdivision (b). The time limits of this section are not jurisdictional.

In fixing a term under this section, the board shall utilize the upper term of imprisonment which could have been imposed for the offense or offenses of which the person was convicted, increased by any additional terms which could have been imposed based on matters which were found to be true in the committing court. However, if at least two of the members of the board after reviewing the person's file

determine that a longer term should be imposed for the reasons specified in Section 1170.2, a longer term may be imposed following the procedures and guidelines set forth in Section 1170.2, except that any hearings deemed necessary by the board shall be held within 90 days of September 28, 1979. Within 90 days of the date the person is received by the state hospital or other treatment facility, or of September 28, 1979, whichever is later, the Board of Prison Terms shall provide each person with the determination of the person's maximum term of commitment or shall notify the person that a hearing will be scheduled to determine the term.

Within 20 days following the determination of the maximum term of commitment the board shall provide the person, the prosecuting attorney, the committing court, and the state hospital or other treatment facility with a written statement setting forth the maximum term of commitment, the calculations, and any materials considered in determining the maximum term.

(3) In the case of a person committed to a state hospital or other treatment facility pursuant to Section 1026 or placed on outpatient status pursuant to Section 1604 who committed a misdemeanor, the maximum term of commitment shall be the longest term of county jail confinement which could have been imposed for the offense or offenses which the person was found to have committed, and the person may not be kept in actual custody longer than this maximum term.

(4) Nothing in this subdivision limits the power of any state hospital or other treatment facility or of the committing court to release the person, conditionally or otherwise, for any period of time allowed by any other provision of law.

(b)(1) A person may be committed beyond the term prescribed by subdivision (a) only under the procedure set forth in this subdivision and only if the person has been committed under Section 1026 for a felony and by reason of a mental disease, defect, or disorder represents a substantial danger of physical harm to others.

(2) Not later than 180 days prior to the termination of the maximum term of commitment prescribed in subdivision (a), the medical director of a state hospital in which the person is being treated, or the medical director of the person's treatment facility or the local program director, if the person is being treated outside a state hospital setting, shall submit to the prosecuting attorney his or her opinion as to whether or not the patient is a person described in paragraph (1). If requested by the prosecuting attorney, the opinion shall be accompanied by supporting evaluations and relevant hospital records. The prosecuting attorney may then file a petition for extended commitment in the superior court which issued the original commitment. The petition shall be filed no later than 90 days before the expiration of the original commitment unless good cause is shown. The petition shall state the reasons for the extended commitment, with accompanying affidavits specifying the factual basis for believing that the person meets each of the requirements set forth in paragraph (1).

(3) When the petition is filed, the court shall advise the person named in the petition of the right to be represented by an attorney and of the right to a jury trial. The rules of discovery in criminal cases shall apply. If the person is being treated in a state hospital when the petition is filed, the court shall notify the community program director of the petition and the hearing date.

(4) The court shall conduct a hearing on the petition for extended commitment. The trial shall be by jury unless waived by both the person and the prosecuting attorney. The trial shall commence no later than 30 calendar days prior to the time the person would otherwise have been released, unless that time is waived by the person or unless good cause is shown.

(5) Pending the hearing, the medical director or person in charge of the facility in which the person is confined shall prepare a summary of the person's programs of treatment and shall forward the summary to the community program director or a designee, and to the court. The community program director or a designee shall review the summary and shall designate a facility within a reasonable distance from the court in which the person may be detained pending the hearing on the petition for extended commitment. The facility so designated shall continue the program of treatment, shall provide adequate security, and shall, to the greatest extent possible, minimize interference with the person's program of treatment.

(6) A designated facility need not be approved for 72–hour treatment and evaluation pursuant to the provisions of the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). However, a county jail may not be designated unless the services specified in paragraph (5) are provided and accommodations are provided which ensure both the safety of the person and the safety of the general population of the jail. If there is evidence that the treatment program is not being complied with or accommodations have not been provided which ensure both the safety of the committed person and the safety of the general population of the jail, the court shall order the person transferred to an appropriate facility or make any other appropriate order, including continuance of the proceedings.

(7) The person shall be entitled to the rights guaranteed under the federal and State Constitutions for criminal proceedings. All proceedings shall be in accordance with applicable constitutional guarantees. The state shall be represented by the district attorney who shall notify the Attorney General in writing that a case has been referred under this section. If the person is indigent, the county public defender or State Public Defender shall be appointed. The State Public Defender may provide for representation of the person in any manner authorized by Section 15402 of the Government Code. Appointment of necessary psychologists or psychiatrists shall be made in accordance with this article and Penal Code and Evidence Code provisions applicable to criminal defendants who have entered pleas of not guilty by reason of insanity.

(8) If the court or jury finds that the patient is a person described in paragraph (1), the court shall order the patient recommitted to the facility in which the patient was confined at the time the petition was filed. This commitment shall be for an additional period of two years from the date of termination of the previous commitment, and the person may not be kept in actual custody longer than two years unless another extension of commitment is obtained in accordance with the provisions of this subdivision. Time spent on outpatient status, except when placed in a locked facility at the direction of the outpatient supervisor, shall not count as actual custody and shall not be credited toward the person's maximum term of commitment or toward the person's term of extended commitment.

(9) A person committed under this subdivision shall be eligible for release to outpatient status pursuant to the provisions of Title 15 (commencing with Section 1600) of Part 2.

(10) Prior to termination of a commitment under this subdivision, a petition for recommitment may be filed to determine whether the patient remains a person described in paragraph (1). The recommitment proceeding shall be conducted in accordance with the provisions of this subdivision.

(11) Any commitment under this subdivision places an affirmative obligation on the treatment facility to provide treatment for the underlying causes of the person's mental disorder.

(Added by Stats.1979, c. 1114, p. 4051, § 3, eff. Sept. 28, 1979. Amended by Stats.1980, c. 547, p. 1507, § 6; Stats.1980, c. 1117, p. 3592, § 6.1; Stats.1982, c. 650, p. 2664, § 1, eff. Aug. 27, 1982; Stats.1984, c. 1488, § 5; Stats.1985, c. 1232, § 3.5, eff. Sept. 30, 1985; Stats.1991, c. 183 (A.B.1014), § 2; Stats.1993–94, 1st Ex.Sess., c. 9 (S.B.39), § 1.)

§ 1026.6. Release of persons committed; persons to be notified

Whenever any person who has been committed to a state hospital pursuant to Section 1026 is released for any reason, including placement on outpatient status, the director of the hospital shall notify the community program director of the county, and the chief law

enforcement officer of the jurisdiction, in which the person will reside upon release, if that information is available.

(Added by Stats.1984, c. 1415, § 1. Amended by Stats.1985, c. 1232, § 4, eff. Sept. 30, 1985; Stats.1986, c. 64, § 1; Stats.1985, c. 1232, § 4, operative Jan. 1, 1989.)

§ 1027. Plea of insanity; appointment and testimony of psychiatrists or psychologists; examination of defendant; additional expert evidence

(a) When a defendant pleads not guilty by reason of insanity the court must select and appoint two, and may select and appoint three, psychiatrists, or licensed psychologists who have a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders, to examine the defendant and investigate his mental status. It is the duty of the psychiatrists or psychologists so selected and appointed to make the examination and investigation, and to testify, whenever summoned, in any proceeding in which the sanity of the defendant is in question. The psychiatrists or psychologists so appointed by the court shall be allowed, in addition to their actual traveling expenses, such fees as in the discretion of the court seems just and reasonable, having regard to the services rendered by the witnesses. The fees allowed shall be paid by the county where the indictment was found or in which the defendant was held for trial.

(b) Any report on the examination and investigation made pursuant to subdivision (a) shall include, but not be limited to, the psychological history of the defendant, the facts surrounding the commission of the acts forming the basis for the present charge used by the psychiatrist or psychologist in making his examination of the defendant, and the present psychological or psychiatric symptoms of the defendant, if any.

(c) This section does not presume that a psychiatrist or psychologist can determine whether a defendant was sane or insane at the time of the alleged offense. This section does not limit a court's discretion to admit or exclude, pursuant to the Evidence Code, psychiatric or psychological evidence about the defendant's state of mind or mental or emotional condition at the time of the alleged offense.

(d) Nothing contained in this section shall be deemed or construed to prevent any party to any criminal action from producing any other expert evidence with respect to the mental status of the defendant; where expert witnesses are called by the district attorney in such action, they shall only be entitled to such witness fees as may be allowed by the court.

(e) Any psychiatrist or psychologist so appointed by the court may be called by either party to the action or by the court itself and when so called shall be subject to all legal objections as to competency and bias and as to qualifications as an expert. When called by the court, or by either party, to the action, the court may examine the psychiatrist, or psychologist as deemed necessary, but either party shall have the same right to object to the questions asked by the court and the evidence adduced as though the psychiatrist or psychologist were a witness for the adverse party. When the psychiatrist or psychologist is called and examined by the court the parties may cross–examine him in the order directed by the court. When called by either party to the action the adverse party may examine him the same as in the case of any other witness called by such party.

(Added by Stats.1929, c. 385, p. 702, § 1. Amended by Stats.1933, c. 905, p. 2347, § 1; Stats.1939, c. 974, p. 2727, § 1; Stats.1947, c. 1043, p. 2444, § 1; Stats.1965, c. 568, p. 1894, § 1; Stats.1965, c. 1962, p. 4490, § 1; Stats.1978, c. 391, p. 1242, § 2; Stats.1981, c. 787, p. 3057, § 1.)

Title 8 OF JUDGMENT AND EXECUTION

Chapter 1 THE JUDGMENT

§ 1191. Appointment of time for pronouncing judgment; reference to probation officer or placement in diagnostic facility; extension of time

In a felony case, after a plea, finding, or verdict of guilty, or after a finding or verdict against the defendant on a plea of a former conviction or acquittal, or once in jeopardy, the court shall appoint a time for pronouncing judgment, which shall be within 20 judicial days after the verdict, finding, or plea of guilty, during which time the court shall refer the case to the probation officer for a report if eligible for probation and pursuant to Section 1203. However, the court may extend the time not more than 10 days for the purpose of hearing or determining any motion for a new trial, or in arrest of judgment, and may further extend the time until the probation officer's report is received and until any proceedings for granting or denying probation have been disposed of. If, in the opinion of the court, there is a reasonable ground for believing a defendant insane, the court may extend the time for pronouncing sentence until the question of insanity has been heard and determined, as provided in this code. If the court orders the defendant placed in a diagnostic facility pursuant to Section 1203.03, the time otherwise allowed by this section for pronouncing judgment is extended by a period equal to (1) the number of days which elapse between the date of the order and the date on which notice is received from the Director of Corrections advising whether or not the Department of Corrections will receive the defendant in the facility, and (2) if the director notifies the court that it will receive the defendant, the time which elapses until his or her return to the court from the facility.

(Enacted 1872. Amended by Code Am.1873–74, c. 614, p. 449, § 73; Stats.1905, c. 571, p. 763, § 1; Stats.1909, c. 589, p. 898, § 1; Stats.1911, c. 380, p. 688, § 1; Stats.1937, c. 510, p. 1499, § 1; Stats.1947, c. 1177, p. 2659, § 1; Stats.1947, c. 1178, p. 2660, § 1; Stats.1951, c. 868, p. 2382, § 1; Stats.1951, c. 1674, p. 3852, § 121; Stats.1957, c. 975, p. 2216, § 2; Stats.1977, c. 162, p. 629, § 1, eff. June 29, 1977, operative July 1, 1977; Stats.1977, c. 165, p. 652, § 19, eff. June 29, 1977, operative July 1, 1977; Stats.1990, c. 570 (A.B. 3964), § 1; Stats.1998, c. 931 (S.B.2139), § 392, eff. Sept. 28, 1998.)

§ 1201. Causes against pronouncement of judgment; insanity; trial; pronouncement of judgment or commitment to state hospital; judgment after recovery of sanity; cause in arrest of judgment or for new trial

He or she may show, for cause against the judgment:

(a) That he or she is insane; and if, in the opinion of the court, there is reasonable ground for believing him or her insane, the question of insanity shall be tried as provided in Chapter 6 (commencing with Section 1367) of Title 10 of Part 2. If, upon the trial of that question, the jury finds that he or she is sane, judgment shall be pronounced, but if they find him or her insane, he or she shall be committed to the state hospital for the care and treatment of the insane, until he or she becomes sane; and when notice is given of that fact, as provided in Section 1372, he or she shall be brought before the court for judgment.

(b) That he or she has good cause to offer, either in arrest of judgment or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial.

(Enacted 1872. Amended by Stats.1905, c. 571, p. 763, § 2; Stats.1987, c. 828, § 68.)

§ 1203.1abc. Assistance for convicts to obtain 12th grade education or GED; participant qualification; pilot program

(a) In addition to any other terms of imprisonment, fine, and conditions of probation, the court may require any adult convicted of an offense which is not a violent felony, as defined in subdivision (c)

of Section 667.5, or a serious felony, as defined in subdivision (c) of Section 1192.7, to participate in a program that is designed to assist the person in obtaining the equivalent of a 12th grade education. In the case of a probationer, the court may require participation in either a literacy program or a General Education Development (GED) program.

(b) A probation officer may utilize volunteers from the community to provide assistance to probationers under this section.

(c) This section shall be operable in Los Angeles County as a pilot project upon approval by a majority vote of the county's board of supervisors to be conducted in two courts within the County of Los Angeles. It shall be operable in other counties only upon approval by a majority vote of a county's board of supervisors.

(d) A county probation department may utilize the volunteer services of a local college or university in evaluating the effectiveness of this program. In the County of Los Angeles, the California State University at Los Angeles (CSULA) shall evaluate the program and submit a report to the Legislature regarding the success or failure of the program. CSULA shall bear the costs of the evaluation and report.

(e) This section shall not apply to any person who is mentally or developmentally incapable of attaining the equivalent of a 12th grade education.

(f) Failure to make progress in a program under subdivision (a) is not a basis for revocation of probation.

(g) This pilot program shall be deemed successful if at least 10 percent of the persons participating in the pilot projects obtain the equivalent of a 12th grade education within three years or improve their academic performance by three grade levels within three years.

(h) It is the intent of the Legislature that any increases in adult enrollment resulting from the implementation of subdivision (a) shall not be included in the apportionment of funds for adult education pursuant to Sections 52616.17 to 52616.20, inclusive, of the Education Code.

(i) This section is repealed effective January 1, 2008, unless it is extended or made permanent by subsequent legislation.

(Added by Stats.1998, c. 498 (A.B.743), § 1. Amended by Stats.2003, c. 468 (S.B.851), § 17; Stats.2004, c. 74 (A.B.1901), § 2.)

Operative Effect

Operative effect of this section, see its terms.

Repeal

For repeal of this section, see its terms.

Title 10 MISCELLANEOUS PROCEEDINGS

Chapter 6 INQUIRY INTO THE COMPETENCE OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION

§ 1367. Mentally incompetent persons; trial or punishment prohibited; application of specified sections

(a) A person cannot be tried or adjudged to punishment while that person is mentally incompetent. A defendant is mentally incompetent for purposes of this chapter if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.

(b) Section 1370 shall apply to a person who is charged with a felony and is incompetent as a result of a mental disorder. Sections 1367.1 and 1370.01 shall apply to a person who is charged with a misdemeanor or misdemeanors only, and the judge finds reason to believe that the defendant is mentally disordered, and may, as a result of the mental disorder, be incompetent to stand trial. Section 1370.1 shall apply to a person who is incompetent as a result of a developmental disability and shall apply to a person who is incompetent as a result of a mental disorder, but is also developmentally disabled.

(Enacted 1872. Amended by Stats.1974, c. 1511, p. 3316, § 2, eff. Sept. 27, 1974; Stats.1977, c. 695, p. 2241, § 1; Stats.1980, c. 547, § 7; Stats.1992, c. 722 (S.B.485), § 10, eff. Sept. 15, 1992.)

§ 1367.1. Incompetency during pendency of action, prior to judgment; judge's conclusion; order for evaluation and treatment; suspension of proceedings; conclusion of evaluation and treatment

(a) During the pendency of an action and prior to judgment in a case when the defendant has been charged with a misdemeanor or misdemeanors only, if the defendant's behavior or other evidence leads the judge to conclude that there is reason to believe that the defendant is mentally disordered and as a result may be incompetent to stand trial, the judge shall state this conclusion and his or her reasons in the record. The judge shall inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally disordered. If the defendant is not represented by counsel, the court shall appoint counsel. At the request of the defendant or his or her counsel or upon its own motion, the court shall recess the proceedings for as long as may be reasonably necessary to permit counsel to confer with the defendant and to form an opinion as to whether the defendant is mentally disordered at that time.

(b) If counsel informs the court that he or she believes the defendant is or may be mentally disordered, the court shall order that the defendant be referred for evaluation and treatment in accordance with Section 4011.6. If counsel informs the court that he or she believes the defendant is not mentally disordered, the court may nevertheless order that the defendant be referred for evaluation and treatment in accordance with Section 4011.6. The judge may order the facility providing evaluation and treatment to provide the court a copy of the discharge summary at the conclusion of evaluation and treatment.

(c) Except as provided in Section 1368.1, when an order for evaluation and treatment in accordance with Section 4011.6 has been issued, all proceedings in the criminal prosecution shall be suspended until the evaluation and treatment has been concluded.

If a jury has been impaneled and sworn to try the defendant, the jury may be discharged if it appears to the court that undue hardship to the jurors would result if the jury is retained on call.

(d) When evaluation and treatment ordered pursuant to this section has concluded, the defendant shall be returned to court. If it appears to the judge that the defendant is competent to stand trial, the criminal process shall resume, the trial on the offense or offenses charged shall proceed, and judgment may be pronounced. If the judge has reason to believe that the defendant may be incompetent to stand trial despite the treatment ordered pursuant to this section, the judge may order that the question of the defendant's mental competence to stand trial is to be determined in a hearing held pursuant to Sections 1368.1 and 1369. If the defendant is found mentally incompetent, then the provision of Section 1370.01 shall apply.

(Added by Stats.1992, c. 722 (S.B.485), § 11, eff. Sept. 15, 1992.)

§ 1368. Doubt as to defendant's sanity; mental competence; hearing; stay of criminal proceedings; discharge or retention of jury

(a) If, during the pendency of an action and prior to judgment, a doubt arises in the mind of the judge as to the mental competence of the defendant, he or she shall state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent. If the defendant is not represented by counsel, the court shall appoint counsel. At the request of the defendant or his or her counsel or upon its own motion, the court shall recess the proceedings for as long as may be reasonably necessary to permit counsel to confer with the defendant and to form an opinion as to the mental competence of the defendant at that point in time.

(b) If counsel informs the court that he or she believes the defendant is or may be mentally incompetent, the court shall order that the

question of the defendant's mental competence is to be determined in a hearing which is held pursuant to Sections 1368.1 and 1369. If counsel informs the court that he or she believes the defendant is mentally competent, the court may nevertheless order a hearing. Any hearing shall be held in the superior court.

(c) Except as provided in Section 1368.1, when an order for a hearing into the present mental competence of the defendant has been issued, all proceedings in the criminal prosecution shall be suspended until the question of the present mental competence of the defendant has been determined.

If a jury has been impaneled and sworn to try the defendant, the jury shall be discharged only if it appears to the court that undue hardship to the jurors would result if the jury is retained on call.

If the defendant is declared mentally incompetent, the jury shall be discharged.

(Enacted 1872. Amended by Code Am.1873–74, c. 614, p. 452, § 81; Code Am.1880, c. 47, p. 28, § 103; Stats.1905, c. 246, p. 222, § 1; Stats.1937, c. 133, p. 373, § 1; Stats.1974, c. 1511, p. 3317, § 3, eff. Sept. 27, 1974; Stats.1998, c. 932 (A.B.1094), § 40.)

§ 1368.1. Proceedings on demurrer or motion pending competency determination

(a) If the action is on a complaint charging a felony, proceedings to determine mental competence shall be held prior to the filing of an information unless the counsel for the defendant requests a preliminary examination under the provisions of Section 859b. At such preliminary examination, counsel for the defendant may (1) demur, (2) move to dismiss the complaint on the ground that there is not reasonable cause to believe that a felony has been committed and that the defendant is guilty thereof, or (3) make a motion under Section 1538.5.

(b) If the action is on a complaint charging a misdemeanor, counsel for the defendant may (1) demur, (2) move to dismiss the complaint on the ground that there is not reasonable cause to believe that a public offense has been committed and that the defendant is guilty thereof, or (3) make a motion under Section 1538.5.

(c) In ruling upon any demurrer or motion described in subdivision (a) or (b), the court may hear any matter which is capable of fair determination without the personal participation of the defendant.

(d) A demurrer or motion described in subdivision (a) or (b) shall be made in the court having jurisdiction over the complaint. The defendant shall not be certified until the demurrer or motion has been decided.

(Added by Stats.1974, c. 1511, p. 3317, § 4, eff. Sept. 27, 1974. Amended by Stats.1982, c. 444, § 1; Stats.1998, c. 931 (S.B.2139), § 404, eff. Sept. 28, 1998.)

§ 1369. Trial of issue of mental competence; psychiatric evaluations; order of proceedings

A trial by court or jury of the question of mental competence shall proceed in the following order:

(a) The court shall appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant. In any case where the defendant or the defendant's counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two psychiatrists, licensed psychologists, or a combination thereof. One of the psychiatrists or licensed psychologists may be named by the defense and one may be named by the prosecution. The examining psychiatrists or licensed psychologists shall evaluate the nature of the defendant's mental disorder, if any, the defendant's ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder and, if within the scope of their licenses and appropriate to their opinions, whether or not treatment with antipsychotic medication is medically appropriate for the defendant and whether antipsychotic medication is likely to restore the defendant to mental competence. If an examining psychologist is of the opinion that antipsychotic medication may be medically appropriate for the defendant and that the defendant should be evaluated by a psychiatrist to determine if antipsychotic medication is medically appropriate, the psychologist shall inform the court of this opinion and his or her recommendation as to whether a psychiatrist should examine the defendant. The examining psychiatrists or licensed psychologists shall also address the issues of whether the defendant has capacity to make decisions regarding antipsychotic medication and whether the defendant is a danger to self or others. If the defendant is examined by a psychiatrist and the psychiatrist forms an opinion as to whether or not treatment with antipsychotic medication is medically appropriate, the psychiatrist shall inform the court of his or her opinions as to the likely or potential side effects of the medication, the expected efficacy of the medication, and possible alternative treatments. If it is suspected the defendant is developmentally disabled, the court shall appoint the director of the regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, or the designee of the director, to examine the defendant. The court may order the developmentally disabled defendant to be confined for examination in a residential facility or state hospital.

The regional center director shall recommend to the court a suitable residential facility or state hospital. Prior to issuing an order pursuant to this section, the court shall consider the recommendation of the regional center director. While the person is confined pursuant to order of the court under this section, he or she shall be provided with necessary care and treatment.

(b)(1) The counsel for the defendant shall offer evidence in support of the allegation of mental incompetence.

(2) If the defense declines to offer any evidence in support of the allegation of mental incompetence, the prosecution may do so.

(c) The prosecution shall present its case regarding the issue of the defendant's present mental competence.

(d) Each party may offer rebutting testimony, unless the court, for good reason in furtherance of justice, also permits other evidence in support of the original contention.

(e) When the evidence is concluded, unless the case is submitted without final argument, the prosecution shall make its final argument and the defense shall conclude with its final argument to the court or jury.

(f) In a jury trial, the court shall charge the jury, instructing them on all matters of law necessary for the rendering of a verdict. It shall be presumed that the defendant is mentally competent unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent. The verdict of the jury shall be unanimous.

(Enacted 1872. Amended by Stats.1974, c. 1511, p. 3318, § 5, eff. Sept. 27, 1974; Stats.1977, c. 695, p. 2242, § 2; Stats.1980, c. 859, § 1; Stats.2004, c. 486 (S.B.1794), § 1.)

§ 1370. Resolution of question of mental competence; procedure after commitment to hospital or other facility; dismissal; conservatorship

(a)(1)(A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent.

(i) In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine

whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

(D) A defendant charged with a violent felony may not be delivered to a state hospital or treatment facility pursuant to this subdivision unless the state hospital or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(E) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(F) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others.

(2) Prior to making the order directing that the defendant be confined in a state hospital or other treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) The court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to a state hospital or to any other treatment facility. No person shall be admitted to a state hospital or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee.

(B) The court shall hear and determine whether the defendant, with advice of his or her counsel, consents to the administration of antipsychotic medication, and shall proceed as follows:

(i) If the defendant, with advice of his or her counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with this subdivision regarding whether antipsychotic medication shall be administered involuntarily.

(ii) If the defendant does not consent to the administration of medication, the court shall hear and determine whether any of the following is true:

(I) The defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in his or her being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

(III) The people have charged the defendant with a serious crime against the person or property; involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial; the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner; less intrusive treatments are unlikely to have substantially the same results; and antipsychotic medication is in the patient's best medical interest in light of his or her medical condition.

(iii) If the court finds any of the conditions described in clause (ii) to be true, the court shall issue an order authorizing the treatment facility to involuntarily administer antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist. The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (ii) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (ii) and does not meet the criteria under subclause (II) of clause (ii).

(iv) In all cases, the treating hospital, facility or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.

(v) Any report made pursuant to paragraph (1) of subdivision (b) shall include a description of any antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a state hospital or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the state hospital or other treatment facility, shall have the right to contact the Patients' Rights Advocate regarding his or her rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (i) of subparagraph (B), but subsequently withdraws his or her consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (ii) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication as specified in subclause (I) of clause (ii) of subparagraph (B), or that the defendant is a danger to others as specified in subclause (II) of clause (ii) of subparagraph (B), the committing court shall be notified of this, including an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate. The court shall provide notice to the prosecuting attorney and to the attorney representing the defendant and shall set a hearing to determine whether involuntary antipsychotic medication should be ordered in the manner described in subparagraph (B).

(3) When the court orders that the defendant be confined in a state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(D) State summary criminal history information.

(E) Any arrest reports prepared by the police department or other law enforcement agency.

(F) Any court–ordered psychiatric examination or evaluation reports.

(G) The community program director's placement recommendation report.

(H) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or any pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(4) When the defendant is committed to a treatment facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a treatment facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of any finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5) When directing that the defendant be confined in a state hospital pursuant to this subdivision, the court shall select the hospital in accordance with the policies established by the State Department of Mental Health.

(6)(A) If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, transfer the defendant to a state hospital or to another public or private treatment facility approved by the community program director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). Where either the defendant or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(B) If the defendant is initially committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b)(1) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the state hospital or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community program director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the community program director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the state hospital or other treatment facility or on outpatient status. Thereafter, at six–month intervals or until the defendant becomes mentally competent, where the defendant is confined in a treatment facility, the medical director of the hospital or person in charge of the facility shall report in writing to the court and the community program director or a designee regarding the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, after the initial 90–day report, the outpatient treatment staff shall report to the community program director on the defendant's progress toward recovery, and the community program director shall report to the court on this matter at six–month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court. If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the community program director or a designee.

(2) Any defendant who has been committed or has been on outpatient status for 18 months and is still hospitalized or on outpatient status shall be returned to the committing court where a hearing shall be held pursuant to the procedures set forth in Section 1369. The court shall transmit a copy of its order to the community program director or a designee.

(3) If it is determined by the court that no treatment for the

defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. The court shall transmit a copy of its order to the community program director or a designee.

(4) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c)(1) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, a defendant who has not recovered mental competence shall be returned to the committing court. The court shall notify the community program director or a designee of the return and of any resulting court orders.

(2) Whenever any defendant is returned to the court pursuant to paragraph (1) or (2) of subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a designee and shall notify the community program director or a designee of the outcome of the proceedings.

(3) Where the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(d) The criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee.

(e) If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings that may be appropriate under the Lanterman–Petris–Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, "secure treatment facility" shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

(Enacted 1872. Amended by Code Am.1873–74, c. 614, p. 453, § 82; Code Am.1880, c. 47, p. 29, § 104; Stats.1905, c. 541, p. 703, § 1; Stats.1959, c. 228, p. 2137, § 1; Stats.1968, c. 1374, p. 2637, § 2, operative July 1, 1969; Stats.1974, c. 1511, p. 3318, § 6, eff. Sept. 27, 1974; Stats.1975, c. 1274, p. 3393, § 4; Stats.1977, c. 691, p. 2224, § 2; Stats.1977, c. 695, p. 2242, § 3; Stats.1977, c. 1237, p. 4150, § 1; Stats.1980, c. 547, § 8; Stats.1985, c. 1232, § 5, eff. Sept. 30, 1985; Stats.1987, c. 1409, § 2; Stats.1989, c. 625, § 2; Stats.1995, c. 593 (A.B.145), § 1; Stats.1996, c. 1026 (A.B.2104), § 1; Stats.1996, c. 1076 (S.B.1391), § 1.5; Stats.2002, c. 664 (A.B.3034), § 173.5; Stats.2004, c. 486 (S.B.1794), § 2.)

§ 1370.01. Effect of mental competency finding on criminal process; treatment order; administration of antipsychotic medication; return to court; dismissal of action

(a)(1) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced. If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent, and the court shall order that (A) in the meantime, the defendant be delivered by the sheriff to an available public or private treatment facility approved by the county mental health director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in this section, and (B) upon the filing of a certificate of restoration to competence, the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the county mental health director or his or her designee.

(2) Prior to making the order directing that the defendant be confined in a treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) The court shall order the county mental health director or his or her designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to a treatment facility. No person shall be admitted to a treatment facility or placed on outpatient status under this section without having been evaluated by the county mental health director or his or her designee. No person shall be admitted to a state hospital under this section unless the county mental health director finds that there is no less restrictive appropriate placement available and the county mental health director has a contract with the State Department of Mental Health for these placements.

(B) The court shall hear and determine whether the defendant, with advice of his or her counsel, consents to the administration of antipsychotic medication, and shall proceed as follows:

(i) If the defendant, with advice of his or her counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with this subdivision regarding whether antipsychotic medication shall be administered involuntarily.

(ii) If the defendant does not consent to the administration of medication, the court shall hear and determine whether any of the following is true:

(I) The defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in his

or her being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

(III) The people have charged the defendant with a serious crime against the person or property; involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial; the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner; less intrusive treatments are unlikely to have substantially the same results; and antipsychotic medication is in the patient's best medical interest in light of his or her medical condition.

(iii) If the court finds any of the conditions described in clause (ii) to be true, the court shall issue an order authorizing the treatment facility to involuntarily administer antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist. The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (ii) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (ii) and does not meet the criteria under subclause (II) of clause (ii).

(iv) In all cases, the treating hospital, facility, or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.

(v) Any report made pursuant to subdivision (b) shall include a description of any antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a state hospital or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the state hospital or other treatment facility, shall have the right to contact the Patients' Rights Advocate regarding his or her rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (i) of subparagraph (B), but subsequently withdraws his or her consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (ii) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication as specified in subclause (I) of clause (ii) of subparagraph (B), or that the defendant is a danger to others as specified in subclause (II) of clause (ii) of subparagraph (B), the committing court shall be notified of this, including an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate. The court shall provide copies of the report to the prosecuting attorney and to the attorney representing the defendant and shall set a hearing to determine whether involuntary antipsychotic medication should be ordered in the manner described in subparagraph (B).

(3) When the court, after considering the placement recommendation of the county mental health director required in paragraph (2), orders that the defendant be confined in a public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the treatment facility where the defendant is to be confined:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(D) State summary criminal history information.

(E) Any arrest reports prepared by the police department or other law enforcement agency.

(F) Any court–ordered psychiatric examination or evaluation reports.

(G) The county mental health director's placement recommendation report.

(4) A person subject to commitment under this section may be placed on outpatient status under the supervision of the county mental health director or his or her designee by order of the court in accordance with the procedures contained in Title 15 (commencing with Section 1600) except that where the term "community program director" appears the term " county mental health director" shall be substituted.

(5) If the defendant is committed or transferred to a public or private treatment facility approved by the county mental health director, the court may, upon receiving the written recommendation of the county mental health director, transfer the defendant to another public or private treatment facility approved by the county mental health director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code. Where either the defendant or the prosecutor chooses to contest the order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the county mental health director or his or her designee.

(b) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the treatment facility to which the defendant is confined shall make a written report to the court and the county mental health director or his or her designee, concerning the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the county mental health director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the county mental health director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the treatment facility or on outpatient status. Thereafter, at six–month intervals or until the defendant becomes mentally competent, where the defendant is confined in a treatment facility, the medical director of the hospital or person in charge of the facility shall report in writing to the court and the county mental health director or a designee regarding the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, after the

initial 90–day report, the outpatient treatment staff shall report to the county mental health director on the defendant's progress toward recovery, and the county mental health director shall report to the court on this matter at six–month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court. If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the county mental health director or his or her designee.

(c)(1) If, at the end of one year from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter, the defendant has not recovered mental competence, the defendant shall be returned to the committing court. The court shall notify the county mental health director or his or her designee of the return and of any resulting court orders.

(2) Whenever any defendant is returned to the court pursuant to subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or his or her designee and shall notify the county mental health director or his or her designee of the outcome of the proceedings.

(d) The criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the county mental health director or his or her designee.

(e) If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings which may be appropriate under Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(Added by Stats.1992, c. 722 (S.B.485), § 12, eff. Sept. 15, 1992. Amended by Stats.2004, c. 486 (S.B.1794), § 3.)

§ 1370.1. Developmental disability of defendant; procedure

(a)(1)(A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent and is developmentally disabled, the trial or judgment shall be suspended until the defendant becomes mentally competent.

(i) Except as provided in clause (ii) or (iii), the court shall consider a recommendation for placement, which recommendation shall be made to the court by the director of a regional center or designee. In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff or other person designated by the court to a state hospital or developmental center for the care and treatment of the developmentally disabled or any other available residential facility approved by the director of a regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code as will promote the defendant's speedy attainment of mental competence, or be placed on outpatient status pursuant to the provisions of Section 1370.4 and Title 15 (commencing with Section 1600) of Part 2.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the developmentally disabled unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the developmentally disabled unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon becoming competent, the court shall order that the defendant be returned to the committing court pursuant to the procedures set forth in paragraph (2) of subdivision (a) of Section 1372 or by another person designated by the court. The court shall further determine conditions under which the person may be absent from the placement for medical treatment, social visits, and other similar activities. Required levels of supervision and security for these activities shall be specified.

(D) The court shall transmit a copy of its order to the regional center director or designee and to the Director of Developmental Services.

(E) A defendant charged with a violent felony may not be placed in a facility or delivered to a state hospital, developmental center, or residential facility pursuant to this subdivision unless the facility, state hospital, developmental center, or residential facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(F) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(G) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1370.4 or 1600, only if the court finds that the placement will not pose a danger to the health or safety of others.

(H) As used in this section, "developmental disability" means a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for the individual, and shall not include other handicapping conditions that are solely physical in nature. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

(2) Prior to making the order directing the defendant be confined

in a state hospital, developmental center, or other residential facility or be placed on outpatient status, the court shall order the regional center director or designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be committed to a state hospital or developmental center or to any other available residential facility approved by the regional center director. No person shall be admitted to a state hospital, developmental center, or other residential facility or accepted for outpatient status under Section 1370.4 without having been evaluated by the regional center director or designee.

(3) When the court orders that the defendant be confined in a state hospital or other secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other secure treatment facility where the defendant is to be confined:

(A) State summary criminal history information.

(B) Any arrest reports prepared by the police department or other law enforcement agency.

(C) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or any pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(4) When the defendant is committed to a residential facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of any finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5)(A) If the defendant is committed or transferred to a state hospital or developmental center pursuant to this section, the court may, upon receiving the written recommendation of the executive director of the state hospital or developmental center and the regional center director that the defendant be transferred to a residential facility approved by the regional center director, order the defendant transferred to that facility. If the defendant is committed or transferred to a residential facility approved by the regional center director, the court may, upon receiving the written recommendation of the regional center director, transfer the defendant to a state hospital or developmental center or to another residential facility approved by the regional center director.

In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code.

The defendant or prosecuting attorney may contest either kind of order of transfer by filing a petition with the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the regional center director or designee.

(B) If the defendant is committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to the new facility. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b)(1) Within 90 days of admission of a person committed pursuant to subdivision (a), the executive director or designee of the state hospital, developmental center, or other facility to which the defendant is committed or the outpatient supervisor where the defendant is placed on outpatient status shall make a written report to the committing court and the regional center director or a designee concerning the defendant's progress toward becoming mentally competent. If the defendant has not become mentally competent, but the report discloses a substantial likelihood the defendant will become mentally competent within the next 90 days, the court may order that the defendant shall remain in the state hospital, developmental center, or other facility or on outpatient status for that period of time. Within 150 days of an admission made pursuant to subdivision (a) or if the defendant becomes mentally competent, the executive director or designee of the hospital or developmental center or person in charge of the facility or the outpatient supervisor shall report to the court and the regional center director or his or her designee regarding the defendant's progress toward becoming mentally competent. The court shall provide to the prosecutor and defense counsel copies of all reports under this section. If the report indicates that there is no substantial likelihood that the defendant has become mentally competent, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the regional center director or designee and to the executive director of the developmental center.

(2) Any defendant who has been committed or has been on outpatient status for 18 months, and is still hospitalized or on outpatient status shall be returned to the committing court where a hearing shall be held pursuant to the procedures set forth in Section 1369. The court shall transmit a copy of its order to the regional center director or designee and the executive director of the developmental center.

(3) If it is determined by the court that no treatment for the defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. A copy of this order shall be sent to the regional center director or designee and to the executive director of the developmental center.

(4) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c)(1)(A) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, any defendant who has not become mentally competent shall be returned to the committing court.

(B) The court shall notify the regional center director or designee and the executive director of the developmental center of that return and of any resulting court orders.

(2) In the event of dismissal of the criminal charges before the defendant becomes mentally competent, the defendant shall be subject to the applicable provisions of the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), or to commitment and detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code. If it is found that the person is not subject to commitment or detention pursuant to the applicable provision of the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to

Section 6502 of the Welfare and Institutions Code, the individual shall not be subject to further confinement pursuant to this article and the criminal action remains subject to dismissal pursuant to Section 1385. The court shall notify the regional center director and the executive director of the developmental center of any dismissal.

(d) Notwithstanding any other provision of this section, the criminal action remains subject to dismissal pursuant to Section 1385. If at any time prior to the maximum period of time allowed for proceedings under this article, the regional center director concludes that the behavior of the defendant related to the defendant's criminal offense has been eliminated during time spent in court–ordered programs, the court may, upon recommendation of the regional center director, dismiss the criminal charges. The court shall transmit a copy of any order of dismissal to the regional center director and to the executive director of the developmental center.

(e) For the purpose of this section, "secure treatment facility" shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

(Added by Stats.1977, c. 695, p. 2245, § 5. Amended by Stats.1978, c. 429, p. 1422, § 159, eff. July 17, 1978, operative July 1, 1978; Stats.1980, c. 547, § 9; Stats.1980, c. 859, § 2; Stats.1980, c. 1253, § 2; Stats.1992, c. 722 (S.B.485), § 13, eff. Sept. 15, 1992; Stats.1996, c. 1026 (A.B.2104), § 2; Stats.1996, c. 1076 (S.B.1391), § 2.5.)

§ 1370.2. Dismissal of misdemeanor charges against one mentally incompetent

If a person is adjudged mentally incompetent pursuant to the provisions of this chapter, the superior court may dismiss any misdemeanor charge pending against the mentally incompetent person. Ten days notice shall be given to the district attorney of any motion to dismiss pursuant to this section. The court shall transmit a copy of any order dismissing a misdemeanor charge pursuant to this section to the community program director, the county mental health director, or the regional center director and the Director of Developmental Services, as appropriate.

(Added by Stats.1974, c. 1511, p. 3320, § 7, eff. Sept. 27, 1974. Amended by Stats.1980, c. 547, § 10; Stats.1985, c. 1232, § 6, eff. Sept. 30, 1985; Stats.1992, c. 722 (S.B.485), § 14, eff. Sept. 15, 1992.)

§ 1370.3. Placement on outpatient status from commitment

A person committed to a state hospital or other treatment facility under the provisions of this chapter may be placed on outpatient status from such commitment as provided in Title 15 (commencing with Section 1600) of Part 2.

(Added by Stats.1980, c. 547, § 12.)

§ 1370.4. Conditions for order for outpatient treatment; law applicable

If, in the evaluation ordered by the court under Section 1370.1, the regional center director, or a designee, is of the opinion that the defendant is not a danger to the health and safety of others while on outpatient treatment and will benefit from such treatment, and has obtained the agreement of the person in charge of a residential facility and of the defendant that the defendant will receive and submit to outpatient treatment and that the person in charge of the facility will designate a person to be the outpatient supervisor of the defendant, the court may order the defendant to undergo outpatient treatment. All of the provisions of Title 15 (commencing with Section 1600) of Part 2 shall apply where a defendant is placed on outpatient status under this section, except that the regional center director shall be substituted for the community program director, the Director of Developmental Services for the Director of Mental Health, and a residential facility for a treatment facility for the purposes of this section.

(Added by Stats.1980, c. 547, § 13. Amended by Stats.1985, c. 1232, § 7, eff. Sept. 30, 1985.)

§ 1370.5. Escape of one committed to mental health facility

(a) Every person committed to a state hospital or other public or private mental health facility pursuant to the provisions of Section 1370, 1370.01, or 1370.1, who escapes from or who escapes while being conveyed to or from a state hospital or facility, is punishable by imprisonment in the county jail not to exceed one year or in the state prison for a determinate term of one year and one day. The term of imprisonment imposed pursuant to this section shall be served consecutively to any other sentence or commitment.

(b) The medical director or person in charge of a state hospital or other public or private mental health facility to which a person has been committed pursuant to the provisions of Section 1370, 1370.01, or 1370.1 shall promptly notify the chief of police of the city in which the hospital or facility is located, or the sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the chief of police or sheriff in apprehending the person, and shall within 48 hours of the escape of the person orally notify the court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.

(Added by Stats.1981, c. 1054, § 2. Amended by Stats.1989, c. 568, § 2; Stats.1992, c. 722 (S.B.485), § 15, eff. Sept. 15, 1992.)

§ 1371. Commitment of defendant; exoneration of bail or return of deposit

The commitment of the defendant, as described in Section 1370 or 1370.01, exonerates his or her bail, or entitles a person, authorized to receive the property of the defendant, to a return of any money he or she may have deposited instead of bail, or gives, to the person or persons found by the court to have deposited any money instead of bail on behalf of the defendant, a right to the return of that money.

(Enacted 1872. Amended by Stats.1935, c. 657, p. 1815, § 10; Stats.1992, c. 722 (S.B.485), § 16, eff. Sept. 15, 1992.)

§ 1372. Restoration of competency; return to court; notice; hearing; release of defendant or return to secure facility; payment of costs

(a)(1) If the medical director of the state hospital or other facility to which the defendant is committed, or the community program director, county mental health director, or regional center director providing outpatient services, determines that the defendant has regained mental competence, the director shall immediately certify that fact to the court by filing a certificate of restoration with the court by certified mail, return receipt requested. For purposes of this section, the date of filing shall be the date on the return receipt.

(2) The court's order committing an individual to a state hospital or other treatment facility pursuant to Section 1370 shall include direction that the sheriff shall redeliver the patient to the court without any further order from the court upon receiving from the state hospital or treatment facility a copy of the certificate of restoration.

(3) The defendant shall be returned to the committing court in the following manner:

(A) A patient who remains confined in a state hospital or other treatment facility shall be redelivered to the sheriff of the county from which the patient was committed. The sheriff shall immediately return the person from the state hospital or other treatment facility to the court for further proceedings.

(B) The patient who is on outpatient status shall be returned by the sheriff to court through arrangements made by the outpatient treatment supervisor.

(C) In all cases, the patient shall be returned to the committing court no later than 10 days following the filing of a certificate of restoration. The state shall only pay for 10 hospital days for patients following the filing of a certificate of restoration of competency. The State Department of Mental Health shall report to the fiscal and appropriate policy committees of the Legislature on an annual basis in February, on the number of days that exceed the 10–day limit prescribed in this subparagraph. This report shall include, but not be limited to, a data sheet that itemizes by county the number of days that exceed this 10–day limit during the preceding year.

(b) If the defendant becomes mentally competent after a conservatorship has been established pursuant to the applicable provisions of the Lanterman–Petris–Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, and Section 1370, the conservator shall certify that fact to the sheriff and district attorney of the county in which the defendant's case is pending, defendant's attorney of record, and the committing court.

(c) When a defendant is returned to court with a certification that competence has been regained, the court shall notify either the community program director, the county mental health director, or the regional center director and the Director of Developmental Services, as appropriate, of the date of any hearing on the defendant's competence and whether or not the defendant was found by the court to have recovered competence.

(d) If the committing court approves the certificate of restoration to competence as to a person in custody, the court shall hold a hearing to determine whether the person is entitled to be admitted to bail or released on own recognizance status pending conclusion of the proceedings. If the superior court approves the certificate of restoration to competence regarding a person on outpatient status, unless it appears that the person has refused to come to court, that person shall remain released either on own recognizance status, or, in the case of a developmentally disabled person, either on the defendant's promise or on the promise of a responsible adult to secure the person's appearance in court for further proceedings. If the person has refused to come to court, the court shall set bail and may place the person in custody until bail is posted.

(e) A defendant subject to either subdivision (a) or (b) who is not admitted to bail or released under subdivision (d) may, at the discretion of the court, upon recommendation of the director of the facility where the defendant is receiving treatment, be returned to the hospital or facility of his or her original commitment or other appropriate secure facility approved by the community program director, the county mental health director, or the regional center director. The recommendation submitted to the court shall be based on the opinion that the person will need continued treatment in a hospital or treatment facility in order to maintain competence to stand trial or that placing the person in a jail environment would create a substantial risk that the person would again become incompetent to stand trial before criminal proceedings could be resumed.

(f) Notwithstanding subdivision (e), if a defendant is returned by the court to a hospital or other facility for the purpose of maintaining competency to stand trial and that defendant is already under civil commitment to that hospital or facility from another county pursuant to the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or as a developmentally disabled person committed pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, the costs of housing and treating the defendant in that facility following return pursuant to subdivision (e) shall be the responsibility of the original county of civil commitment.

(Enacted 1872. Amended by Stats.1905, c. 541, p. 704, § 2; Stats.1968, c. 599, p. 1270, § 1; Stats.1974, c. 1511, p. 3320, § 8, eff. Sept. 27, 1974; Stats.1980, c. 547, § 14; Stats.1981, c. 611, § 1; Stats.1985, c. 1232, § 8, eff. Sept. 30, 1985; Stats.1992, c. 722 (S.B.485), § 17, eff. Sept. 15, 1992; Stats.1997, c. 294 (S.B.391), § 31, eff. Aug. 18, 1997; Stats.2003, c. 356 (A.B.941), § 1; Stats.2004, c. 183 (A.B.3082), § 271; Stats.2004, c. 405 (S.B.1796), § 15.)

§ 1373. Transportation of defendant to and from hospital; county charge; recovery from estate or relative

The expense of sending the defendant to the state hospital or other facility, and of bringing him back, are chargeable to the county in which the indictment was found or information filed; but the county may recover them from the estate of the defendant, if he has any, or from a relative, bound to provide for and maintain him.

(Enacted 1872. Amended by Code Am.1880, c. 47, p. 29, § 105; Stats.1905, c. 541, p. 704, § 3; Stats.1929, c. 168, p. 321, § 1; Stats.1974, c. 1511, p. 3320, § 9, eff. Sept. 27, 1974.)

§ 1373.5. Rejected claim for transportation expense; interest

In every case where a claim is presented to the county for money due under the provisions of section 1373 of this code, interest shall be allowed from the date of rejection, if rejected and recovery is finally had thereon.

(Added by Stats.1939, c. 441, p. 1775, § 1.)

§ 1374. Outpatient's recovery of competence

When a defendant who has been found incompetent is on outpatient status under Title 15 (commencing with Section 1600) of Part 2 and the outpatient treatment staff is of the opinion that the defendant has recovered competence, the supervisor shall communicate such opinion to the community program director. If the community program director concurs, that opinion shall be certified by such director to the committing court. The court shall calendar the case for further proceeding pursuant to Section 1372.

(Added by Stats.1980, c. 547, § 15.5. Amended by Stats.1985, c. 1232, § 9, eff. Sept. 30, 1985.)

§ 1375. Processing and payment of claims for amounts due from county to state

Claims by the state for all amounts due from any county by reason of the provisions of Section 1373 of this code shall be processed and paid by the county pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

(Added by Stats.1935, c. 178, p. 844, § 1. Amended by Stats.1965, c. 263, p. 1257, § 13.)

§ 1375.5. Credit on sentence for time spent in hospital or other facility

Time spent by a defendant in a hospital or other facility as a result of a commitment therein as a mentally incompetent pursuant to this chapter shall be credited on the term of any imprisonment, if any, for which the defendant is sentenced in the criminal case which was suspended pursuant to Section 1370 or 1370.1.

As used in this section, "time spent in a hospital or other facility" includes days a defendant is treated as an outpatient pursuant to Title 15 (commencing with Section 1600) of Part 2.

(Added by Stats.1974, c. 1511, p. 3320, § 11, eff. Sept. 27, 1974. Amended by Stats.1977, c. 695, p. 2248, § 6; Stats.1980, c. 547, § 16.)

§ 1376. "Mentally retarded" defined; mental retardation hearing; decision of court or jury; presentation of evidence and arguments; death penalty

(a) As used in this section, "mentally retarded" means the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the age of 18.

(b)(1) In any case in which the prosecution seeks the death penalty, the defendant may, at a reasonable time prior to the commencement of trial, apply for an order directing that a mental retardation hearing be conducted. Upon the submission of a declaration by a qualified expert stating his or her opinion that the defendant is mentally retarded, the court shall order a hearing to determine whether the defendant is mentally retarded. At the request of the defendant, the court shall conduct the hearing without a jury prior to the commencement of the trial. The defendant's request for a court hearing prior to trial shall constitute a waiver of a jury hearing on the issue of mental retardation. If the defendant does not request a court hearing, the court shall order a jury hearing to determine if the defendant is mentally retarded. The jury hearing on mental retardation shall occur at the conclusion of the phase of the trial in which the jury has found the defendant guilty with a finding that one or more of the special circumstances enumerated in Section 190.2 are true. Except as provided in paragraph (3), the same jury shall make a finding that the defendant is mentally retarded, or that the defendant is not mentally retarded.

(2) For the purposes of the procedures set forth in this section, the

court or jury shall decide only the question of the defendant's mental retardation. The defendant shall present evidence in support of the claim that he or she is mentally retarded. The prosecution shall present its case regarding the issue of whether the defendant is mentally retarded. Each party may offer rebuttal evidence. The court, for good cause in furtherance of justice, may permit either party to reopen its case to present evidence in support of or opposition to the claim of retardation. Nothing in this section shall prohibit the court from making orders reasonably necessary to ensure the production of evidence sufficient to determine whether or not the defendant is mentally retarded, including, but not limited to, the appointment of, and examination of the defendant by, qualified experts. No statement made by the defendant during an examination ordered by the court shall be admissible in the trial on the defendant's guilt.

(3) At the close of evidence, the prosecution shall make its final argument, and the defendant shall conclude with his or her final argument. The burden of proof shall be on the defense to prove by a preponderance of the evidence that the defendant is mentally retarded. The jury shall return a verdict that either the defendant is mentally retarded or the defendant is not mentally retarded. The verdict of the jury shall be unanimous. In any case in which the jury has been unable to reach a unanimous verdict that the defendant is mentally retarded, and does not reach a unanimous verdict that the defendant is not mentally retarded, the court shall dismiss the jury and order a new jury impaneled to try the issue of mental retardation. The issue of guilt shall not be tried by the new jury.

(c) In the event the hearing is conducted before the court prior to the commencement of the trial, the following shall apply:

(1) If the court finds that the defendant is mentally retarded, the court shall preclude the death penalty and the criminal trial thereafter shall proceed as in any other case in which a sentence of death is not sought by the prosecution. If the defendant is found guilty of murder in the first degree, with a finding that one or more of the special circumstances enumerated in Section 190.2 are true, the court shall sentence the defendant to confinement in the state prison for life without the possibility of parole. The jury shall not be informed of the prior proceedings or the findings concerning the defendant's claim of mental retardation.

(2) If the court finds that the defendant is not mentally retarded, the trial court shall proceed as in any other case in which a sentence of death is sought by the prosecution. The jury shall not be informed of the prior proceedings or the findings concerning the defendant's claim of mental retardation.

(d) In the event the hearing is conducted before the jury after the defendant is found guilty with a finding that one or more of the special circumstances enumerated in Section 190.2 are true, the following shall apply:

(1) If the jury finds that the defendant is mentally retarded, the court shall preclude the death penalty and shall sentence the defendant to confinement in the state prison for life without the possibility of parole.

(2) If the jury finds that the defendant is not mentally retarded, the trial shall proceed as in any other case in which a sentence of death is sought by the prosecution.

(e) In any case in which the defendant has not requested a court hearing as provided in subdivision (b), and has entered a plea of not guilty by reason of insanity under Sections 190.4 and 1026, the hearing on mental retardation shall occur at the conclusion of the sanity trial if the defendant is found sane.

(Added by Stats.2003, c. 700 (S.B.3), § 1.)

Title 12 SPECIAL PROCEEDINGS OF A CRIMINAL NATURE

Chapter 3.5 DISCLOSURE OF MEDICAL RECORDS TO LAW ENFORCEMENT AGENCIES

§ 1543. Health care facility patient records; procedure to obtain disclosure; exceptions

(a) Records of the identity, diagnosis, prognosis, or treatment of any patient maintained by a health care facility which are not privileged records required to be secured by the special master procedure in Section 1524, or records required by law to be confidential, shall only be disclosed to law enforcement agencies pursuant to this section:

(1) In accordance with the prior written consent of the patient; or

(2) If authorized by an appropriate order of a court of competent jurisdiction in the county where the records are located, granted after application showing good cause therefor. In assessing good cause, the court:

(A) Shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician–patient relationship, and to the treatment services;

(B) Shall determine that there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution; or

(3) By a search warrant obtained pursuant to Section 1524.

(b) The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he or she ceases to be a patient.

(c) Except where an extraordinary order under Section 1544 is granted or a search warrant is obtained pursuant to Section 1524, any health care facility whose records are sought under this chapter shall be notified of the application and afforded an opportunity to appear and be heard thereon.

(d) Both disclosure and dissemination of any information from the records shall be limited under the terms of the order to assure that no information will be unnecessarily disclosed and that dissemination will be no wider than necessary.

This chapter shall not apply to investigations of fraud in the provision or receipt of Medi–Cal benefits, investigations of insurance fraud performed by the Department of Insurance or the California Highway Patrol, investigations of workers' compensation insurance fraud performed by the Department of Corrections and conducted by peace officers specified in paragraph (2) of subdivision (d) of Section 830.2, and investigations and research regarding occupational health and safety performed by or under agreement with the Department of Industrial Relations. Access to medical records in these investigations shall be governed by all laws in effect at the time access is sought.

(e) Nothing in this chapter shall prohibit disclosure by a medical facility or medical provider of information contained in medical records where disclosure to specific agencies is mandated by statutes or regulations.

(f) This chapter shall not be construed to authorize disclosure of privileged records to law enforcement agencies by the procedure set forth in this chapter, where the privileged records are required to be secured by the special master procedure set forth in subdivision (c) of Section 1524 or required by law to be confidential.

(Added by Stats.1980, c. 1080, § 1. Amended by Stats.2004, c. 490 (S.B.1344), § 2.)

Chapter 4 PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE

§ 1551.05. Mentally disordered and developmentally disabled offenders on outpatient status; departure from state without approval; application for extradition

(a) Any person on outpatient status pursuant to Title 15 (commencing with Section 1600) of Part 2 or pursuant to subdivision (d) of Section 2972 who leaves this state without complying with Section 1611, or who fails to return to this state on the date specified by the committing court, shall be subject to extradition in accordance with this section.

(b) When the return to this state is required by a person who is subject to extradition pursuant to subdivision (a), the Director of Mental Health shall present to the Governor a written application for requisition for the return of that person. In the requisition application there shall be stated the name of the person, the type of judicial commitment the person is under, the nature of the underlying criminal act which was the basis for the judicial commitment, the circumstances of the noncompliance with Section 1611, and the state in which the person is believed to be, including the specific location of the person, if known.

(c) The application shall be verified, shall be executed in duplicate, and shall be accompanied by two certified copies of the court order of judicial commitment and of the court order authorizing outpatient status. The director may also attach any affidavits or other documents in duplicate as are deemed proper to be submitted with the application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one copy of the court orders shall be filed in the office of the Secretary of State. The other copies of all papers shall be forwarded with the Governor's requisition.

(d) Upon receipt of an application under this section, the Governor or agent authorized in writing by the Governor whose authorization has been filed with the Secretary of State, may sign a requisition for the return of the person.

(Added by Stats.1988, c. 74, § 1.)

Title 15 OUTPATIENT STATUS FOR MENTALLY DISORDERED AND DEVELOPMENTALLY DISABLED OFFENDERS

§ 1600. Eligibility

Any person committed to a state hospital or other treatment facility under the provisions of Section 1026, or Chapter 6 (commencing with Section 1367) of Title 10 of this code, or Section 6316 or 6321 of the Welfare and Institutions Code may be placed on outpatient status from that commitment subject to the procedures and provisions of this title, except that a developmentally disabled person may be placed on outpatient status from that commitment under the provisions of this title as modified by Section 1370.4. Any person committed as a sexually violent predator under the provisions of Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code may be placed on outpatient status from that commitment in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(Added by Stats.1980, c. 547, § 17. Amended by Stats.1996, c. 462 (A.B.3130), § 1, eff. Sept. 13, 1996.)

§ 1600.5. Actual custody and credit toward maximum term of commitment or term of extended commitment; time spent in locked facilities

For a person committed as a mentally disordered sex offender under former Section 6316 or 6316.2 of the Welfare and Institutions Code, or committed pursuant to Section 1026 or 1026.5, or committed pursuant to Section 2972, who is placed on outpatient status under the provisions of this title, time spent on outpatient status, except when placed in a locked facility at the direction of the outpatient supervisor, shall not count as actual custody and shall not be credited toward the person's maximum term of commitment or toward the person's term of extended commitment. Nothing in this section shall be construed to extend the maximum period of parole of a mentally disordered offender.

(Added by Stats.1985, c. 1416, § 2. Amended by Stats.1993–94, 1st Ex.Sess., c. 9 (S.B.39), § 2; Stats.2000, c. 324 (A.B.1881), § 1.)

§ 1601. Felonies of violence, required confinement; other offenses

(a) In the case of any person charged with and found incompetent on a charge of, convicted of, or found not guilty by reason of insanity of murder, mayhem, aggravated mayhem, a violation of Section 207, 209, or 209.5 in which the victim suffers intentionally inflicted great bodily injury, robbery or carjacking with a deadly or dangerous weapon or in which the victim suffers great bodily injury, a violation of subdivision (a) or (b) of Section 451, a violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, a violation of paragraph (1) or (4) of subdivision (a) of Section 262, a violation of Section 459 in the first degree, a violation of Section 220 in which the victim suffers great bodily injury, a violation of Section 288, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310, or any felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, outpatient status under this title shall not be available until that person has actually been confined in a state hospital or other facility for 180 days or more after having been committed under the provisions of law specified in Section 1600.

(b) In the case of any person charged with, and found incompetent on a charge of, or convicted of, any misdemeanor or any felony other than those described in subdivision (a), or found not guilty of any misdemeanor by reason of insanity, outpatient status under this title may be granted by the court prior to actual confinement in a state hospital or other treatment facility under the provisions of law specified in Section 1600.

(Added by Stats.1980, c. 547, § 17. Amended by Stats.1984, c. 1488, § 6; Stats.1987, c. 828, § 105; Stats.1989, c. 897, § 42; Stats.1993, c. 610 (A.B.6), § 24, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 26, eff. Oct. 1, 1993; Stats.1994, c. 224 (S.B.1436), § 7; Stats.1994, c. 1188 (S.B.59), § 17.)

§ 1602. Conditions; evaluation and treatment plan

(a) Any person subject to the provisions of subdivision (b) of Section 1601 may be placed on outpatient status, if all of the following conditions are satisfied:

(1) In the case of a person who is an inpatient, the director of the state hospital or other treatment facility to which the person has been committed advises the court that the defendant will not be a danger to the health and safety of others while on outpatient status, and will benefit from such outpatient status.

(2) In all cases, the community program director or a designee advises the court that the defendant will not be a danger to the health and safety of others while on outpatient status, will benefit from such status, and identifies an appropriate program of supervision and treatment.

(3) After actual notice to the prosecutor and defense counsel, and after a hearing in court, the court specifically approves the recommendation and plan for outpatient status.

(b) The community program director or a designee shall prepare and submit the evaluation and the treatment plan specified in paragraph (2) of subdivision (a) to the court within 15 calendar days after notification by the court to do so, except that in the case of a person who is an inpatient, the evaluation and treatment plan shall be submitted within 30 calendar days after notification by the court to do so.

(c) Any evaluations and recommendations pursuant to paragraphs (1) and (2) of subdivision (a) shall include review and consideration of complete, available information regarding the circumstances of the criminal offense and the person's prior criminal history.
(Added by Stats.1980, c. 547, § 17. Amended by Stats.1985, c. 1232, § 10, eff. Sept. 30, 1985.)

§ 1603. Conditions; felonies of violence

(a) Any person subject to subdivision (a) of Section 1601 may be placed on outpatient status if all of the following conditions are satisfied:

(1) The director of the state hospital or other treatment facility to which the person has been committed advises the committing court and the prosecutor that the defendant would no longer be a danger to the health and safety of others, including himself or herself, while under supervision and treatment in the community, and will benefit from that status.

(2) The community program director advises the court that the defendant will benefit from that status, and identifies an appropriate program of supervision and treatment.

(3) The prosecutor shall provide notice of the hearing date and pending release to the victim or next of kin of the victim of the offense for which the person was committed where a request for the notice has been filed with the court, and after a hearing in court, the court specifically approves the recommendation and plan for outpatient status pursuant to Section 1604. The burden shall be on the victim or next of kin to the victim to keep the court apprised of the party's current mailing address.

In any case in which the victim or next of kin to the victim has filed a request for notice with the director of the state hospital or other treatment facility, he or she shall be notified by the director at the inception of any program in which the committed person would be allowed any type of day release unattended by the staff of the facility.

(b) The community program director shall prepare and submit the evaluation and the treatment plan specified in paragraph (2) of subdivision (a) to the court within 30 calendar days after notification by the court to do so.

(c) Any evaluations and recommendations pursuant to paragraphs (1) and (2) of subdivision (a) shall include review and consideration of complete, available information regarding the circumstances of the criminal offense and the person's prior criminal history.
(Added by Stats.1980, c. 547, § 17. Amended by Stats.1982, c. 1232, p. 4543, § 1; Stats.1984, c. 1488, § 7; Stats.1985, c. 1232, § 11, eff. Sept. 30, 1985; Stats.1987, c. 1343, § 3; Stats.1993, c. 1141 (S.B.476), § 4; Stats.1994, c. 1086 (S.B.1487), § 4; Stats.2004, c. 628 (A.B.1504), § 1.)

§ 1604. Recommendations; hearing; determination; transmittal of record

(a) Upon receipt by the committing court of the recommendation of the director of the state hospital or other treatment facility to which the person has been committed that the person may be eligible for outpatient status as set forth in subdivision (a)(1) of Section 1602 or 1603, the court shall immediately forward such recommendation to the community program director, prosecutor, and defense counsel. The court shall provide copies of the arrest reports and the state summary criminal history information to the community program director.

(b) Within 30 calendar days the community program director or a designee shall submit to the court and, when appropriate, to the director of the state hospital or other treatment facility, a recommendation regarding the defendant's eligibility for outpatient status, as set forth in subdivision (a)(2) of Section 1602 or 1603 and the recommended plan for outpatient supervision and treatment. The plan shall set forth specific terms and conditions to be followed during outpatient status. The court shall provide copies of this report to the prosecutor and the defense counsel.

(c) The court shall calendar the matter for hearing within 15 judicial days of the receipt of the community program director's report and shall give notice of the hearing date to the prosecutor, defense counsel, the community program director, and, when appropriate, to the director of the state hospital or other facility. In any hearing conducted pursuant to this section, the court shall consider the circumstances and nature of the criminal offense leading to commitment and shall consider the person's prior criminal history.

(d) The court shall, after a hearing in court, either approve or disapprove the recommendation for outpatient status. If the approval of the court is given, the defendant shall be placed on outpatient status subject to the terms and conditions specified in the supervision and treatment plan. If the outpatient treatment occurs in a county other than the county of commitment, the court shall transmit a copy of the case record to the superior court in the county where outpatient treatment occurs, so that the record will be available if revocation proceedings are initiated pursuant to Section 1608 or 1609.
(Added by Stats.1980, c. 547, § 17. Amended by Stats.1985, c. 1232, § 14, eff. Sept. 30, 1985.)

§ 1605. Supervision; progress reports

(a) In accordance with Section 1615 of this code and Section 5709.8 of the Welfare and Institutions Code, the State Department of Mental Health shall be responsible for the supervision of persons placed on outpatient status under this title. The State Department of Mental Health shall designate, for each county or region comprised of two or more counties, a community program director who shall be responsible for administering the community treatment programs for persons committed from that county or region under the provisions specified in Section 1600.

(b) The State Department of Mental Health shall notify in writing the superior court, the district attorney, the county public defender or public defense agency, and the county mental health director of each county as to the person designated to be the community program director for that county, and timely written notice shall be given whenever a new community program director is to be designated.

(c) The community program director shall be the outpatient treatment supervisor of persons placed on outpatient status under this title. The community program director may delegate the outpatient treatment supervision responsibility to a designee.

(d) The outpatient treatment supervisor shall, at 90–day intervals following the beginning of outpatient treatment, submit to the court, the prosecutor and defense counsel, and to the community program director, where appropriate, a report setting forth the status and progress of the defendant.
(Added by Stats.1980, c. 547, § 17. Amended by Stats.1985, c. 1232, § 15, eff. Sept. 30, 1985; Stats.1991, c. 435 (A.B.655), § 1.)

§ 1606. Annual review; notice and hearing; powers of court

Outpatient status shall be for a period not to exceed one year. At the end of the period of outpatient status approved by the court, the court shall, after actual notice to the prosecutor, the defense counsel, and the community program director, and after a hearing in court, either discharge the person from commitment under appropriate provisions of the law, order the person confined to a treatment facility, or renew its approval of outpatient status. Prior to such hearing, the community program director shall furnish a report and recommendation to the medical director of the state hospital, where appropriate, and to the court, which the court shall make available to the prosecutor and defense counsel. The person shall remain on outpatient status until the court renders its decision unless hospitalized under other provision of the law. The hearing pursuant to the provisions of this section shall be held no later than 30 days after the end of the one–year period of outpatient status unless good cause exists. The court shall transmit a copy of its order to the community program director or a designee.
(Added by Stats.1980, c. 547, § 17. Amended by Stats.1985, c. 1232, § 16, eff. Sept. 30, 1985.)

§ 1607. Supervisor's opinion as to recovery of competence; procedure

If the outpatient supervisor is of the opinion that the person has regained competence to stand trial, or is no longer insane, is no longer a mentally disordered offender, or is no longer a mentally disordered sex offender, the community program director shall submit his or her opinion to the medical director of the state hospital, where appropriate, and to the court which shall calendar the case for further proceedings under the provisions of Section 1372, 1026.2, or 2972 of this code or Section 6325 of the Welfare and Institutions Code.

(Added by Stats.1980, c. 547, § 17. Amended by Stats.1985, c. 1232, § 17, eff. Sept. 30, 1985; Stats.2000, c. 324 (A.B.1881), § 2.)

§ 1608. Request for revocation of outpatient status by treatment supervisor

If at any time during the outpatient period, the outpatient treatment supervisor is of the opinion that the person requires extended inpatient treatment or refuses to accept further outpatient treatment and supervision, the community program director shall notify the superior court in either the county which approved outpatient status or in the county where outpatient treatment is being provided of such opinion by means of a written request for revocation of outpatient status. The community program director shall furnish a copy of this request to the defense counsel and to the prosecutor in both counties if the request is made in the county of treatment rather than the county of commitment.

Within 15 judicial days, the court where the request was filed shall hold a hearing and shall either approve or disapprove the request for revocation of outpatient status. If the court approves the request for revocation, the court shall order that the person be confined in a state hospital or other treatment facility approved by the community program director. The court shall transmit a copy of its order to the community program director or a designee. Where the county of treatment and the county of commitment differ and revocation occurs in the county of treatment, the court shall enter the name of the committing county and its case number on the order of revocation and shall send a copy of the order to the committing court and the prosecutor and defense counsel in the county of commitment.

(Added by Stats.1980, c. 547, § 17. Amended by Stats.1985, c. 1232, § 18, eff. Sept. 30, 1985.)

§ 1609. Request for revocation of outpatient status by prosecutor

If at any time during the outpatient period or placement with a local mental health program pursuant to subdivision (b) of Section 1026.2 the prosecutor is of the opinion that the person is a danger to the health and safety of others while on that status, the prosecutor may petition the court for a hearing to determine whether the person shall be continued on that status. Upon receipt of the petition, the court shall calendar the case for further proceedings within 15 judicial days and the clerk shall notify the person, the community program director, and the attorney of record for the person of the hearing date. Upon failure of the person to appear as noticed, if a proper affidavit of service and advisement has been filed with the court, the court may issue a body attachment for such person. If, after a hearing in court conducted using the same standards used in conducting probation revocation hearings pursuant to Section 1203.2, the judge determines that the person is a danger to the health and safety of others, the court shall order that the person be confined in a state hospital or other treatment facility which has been approved by the community program director.

(Added by Stats.1980, c. 547, § 17. Amended by Stats.1984, c. 1488, § 9; Stats.1985, c. 1232, § 19, eff. Sept. 30, 1985.)

§ 1610. Confinement pending decision on request for revocation; review

(a) Upon the filing of a request for revocation under Section 1608 or 1609 and pending the court's decision on revocation, the person subject to revocation may be confined in a facility designated by the community program director when it is the opinion of that director that the person will now be a danger to self or to another while on outpatient status and that to delay confinement until the revocation hearing would pose an imminent risk of harm to the person or to another. The facility so designated shall continue the patient's program of treatment, shall provide adequate security so as to ensure both the safety of the person and the safety of others in the facility, and shall, to the extent possible, minimize interference with the person's program of treatment. Upon the request of the community program director or a designee, a peace officer shall take, or cause to be taken, the person into custody and transport the person to a facility designated by the community program director for confinement under this section. Within one judicial day after the person is confined in a jail under this section, the community program director shall apply in writing to the court for authorization to confine the person pending the hearing under Section 1608 or Section 1609 or subdivision (c). The application shall be in the form of a declaration, and shall specify the behavior or other reason justifying the confinement of the person in a jail. Upon receipt of the application for confinement, the court shall consider and rule upon it, and if the court authorizes detention in a jail, the court shall actually serve copies of all orders and all documents filed by the community program director upon the prosecuting and defense counsel. The community program director shall notify the court in writing of the confinement of the person and of the factual basis for the opinion that the immediate confinement in a jail was necessary. The court shall supply a copy of these documents to the prosecutor and defense counsel.

(b) The facility designated by the community program director may be a state hospital, a local treatment facility, a county jail, or any other appropriate facility, so long as the facility can continue the person's program of treatment, provide adequate security, and minimize interference with the person's program of treatment. If the facility designated by the community program director is a county jail, the patient shall be separated from the general population of the jail. In the case of a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, who is held pending civil process under the sexually violent predator laws, the person may be housed as provided by Section 4002. The designated facility need not be approved for 72–hour treatment and evaluation pursuant to the provisions of the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code); however, a county jail may not be designated unless the services specified above are provided, and accommodations are provided which ensure both the safety of the person and the safety of the general population of the jail. Within three judicial days of the patient's confinement in a jail, the community program director shall report to the court regarding what type of treatment the patient is receiving in the facility. If there is evidence that the treatment program is not being complied with, or accommodations have not been provided which ensure both the safety of the committed person and the safety of the general population of the jail, the court shall order the person transferred to an appropriate facility, including an appropriate state hospital. Nothing in this subdivision shall be construed as authorizing jail facilities to operate as health facilities, as defined in Section 1250 of the Health and Safety Code, without complying with applicable requirements of law.

(c) A person confined under this section shall have the right to judicial review of his or her confinement in a jail under this section in a manner similar to that which is prescribed in Article 5 (commencing with Section 5275) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code and to an explanation of rights in the manner prescribed in Section 5325 of the Welfare and Institutions Code.

Nothing in this section shall prevent hospitalization pursuant to the provisions of Section 5150, 5250, 5350, or 5353 of the Welfare and Institutions Code.

(d) A person whose confinement in a treatment facility under

Section 1608 or 1609 is approved by the court shall not be released again to outpatient status unless court approval is obtained under Section 1602 or 1603.
(Added by Stats.1980, c. 547, § 17. Amended by Stats.1984, c. 1488, § 10; Stats.1985, c. 1232, § 20, eff. Sept. 30, 1985; Stats.1988, c. 996, § 1, eff. Sept. 20, 1988; Stats.2001, c. 248 (A.B.659), § 1.)

§ 1611. Departure from state; approval from committing court; contents; notice of approval; hearing; penalty

(a) No person who is on outpatient status pursuant to this title or Section 2972 shall leave this state without first obtaining prior written approval to do so from the committing court. The prior written approval of the court for the person to leave this state shall specify when the person may leave, when the person is required to return, and may specify other conditions or limitations at the discretion of the court. The written approval for the person to leave this state may be in a form and format chosen by the committing court.

In no event shall the court give written approval for the person to leave this state without providing notice to the prosecutor, the defense counsel, and the community program director. The court may conduct a hearing on the question of whether the person should be allowed to leave this state and what conditions or limitations, if any, should be imposed.

(b) Any person who violates subdivision (a) is guilty of a misdemeanor.
(Added by Stats.1988, c. 74, § 2.)

§ 1612. Restrictions on release

Any person committed to a state hospital or other treatment facility under the provisions of Section 1026, or Chapter 6 (commencing with Section 1367) of Title 10 of this code, or former Section 6316 or 6321 of the Welfare and Institutions Code shall not be released therefrom except as expressly provided in this title or Section 1026.2.
(Added by Stats.1980, c. 547, § 17. Amended by Stats.1984, c. 1488, § 13.)

§ 1614. Outpatients under former law

Persons ordered to undergo outpatient treatment under former Sections 1026.1 and 1374 of the Penal Code and subdivision (a) of Section 6325.1 of the Welfare and Institutions Code shall, on January 1, 1981, be considered as being on outpatient status under this title and this title shall apply to such persons.
(Added by Stats.1980, c. 547, § 17.)

§ 1615. Treatment and supervision of judicially committed patients; availability of services; forensic conditional release program; contact of county mental health program; data gathering and program standards

Pursuant to Section 5709.8 of the Welfare and Institutions Code, the State Department of Mental Health shall be responsible for the community treatment and supervision of judicially committed patients. These services shall be available on a county or regional basis. The department may provide these services directly or through contract with private providers or counties. The program or programs through which these services are provided shall be known as the Forensic Conditional Release Program.

The department shall contact all county mental health programs by January 1, 1986, to determine their interest in providing an appropriate level of supervision and treatment of judicially committed patients at reasonable cost. County mental health agencies may agree or refuse to operate such a program.

The State Department of Mental Health shall ensure consistent data gathering and program standards for use statewide by the Forensic Conditional Release Program.
(Added by Stats.1984, c. 1415, § 2. Amended by Stats.1985, c. 1416, § 3; Stats.1987, c. 687, § 2; Stats.1988, c. 37, § 1.)

§ 1616. Research agency study of the prevalence of severe mental disorder among state prison inmates and parolees; content; departments cooperating; design of study

The state shall contract with a research agency which shall determine the prevalence of severe mental disorder among the state prison inmates and parolees, including persons admitted to prison, the resident population, and those discharged to parole. An evaluation of the array of services shall be performed, including the correctional, state hospital, and local inpatient programs; residential–level care and partial day care within the institutions as well as in the community; and the individual and group treatment which may be provided within the correctional setting and in the community upon release. The review shall include the interrelationship between the security and clinical staff, as well as the architectural design which aids meeting the treatment needs of these mentally ill offenders while maintaining a secure setting. Administration of these programs within the institutions and in the community shall be reviewed by the contracting agency. The ability of treatment programs to prevent reoffenses by inmates with severe mental disorders shall also be addressed. The process for evaluating inmates and parolees to determine their need for treatment and the ability to differentiate those who will benefit from treatment and those who will not shall be reviewed.

The State Department of Mental Health, the Department of Corrections, and the Department of Justice shall cooperate with the research agency conducting this study.

The research agency conducting this study shall consult with the State Department of Mental Health, the Department of Corrections, the Department of Justice, and the Forensic Mental Health Association of California in the design of the study.
(Added by Stats.1985, c. 1416, § 4.)

§ 1617. Research and evaluation of forensic conditional release program

The State Department of Mental Health shall research the demographic profiles and other related information pertaining to persons receiving supervision and treatment in the Forensic Conditional Release Program. An evaluation of the program shall determine its effectiveness in successfully reintegrating these persons into society after release from state institutions. This evaluation of program effectiveness shall include, but not be limited to, a determination of the rates of reoffense while these persons are served by the program and after their discharge. This evaluation shall also address the effectiveness of the various treatment components of the program and their intensity.

The State Department of Mental Health may contract with an independent research agency to perform this research and evaluation project. Any independent research agency conducting this research shall consult with the Forensic Mental Health Association concerning the development of the research and evaluation design.
(Added by Stats.1985, c. 1416, § 5. Amended by Stats.1987, c. 687, § 3; Stats.1988, c. 37, § 2.)

§ 1618. Waiver of criminal and civil liability for criminal acts committed by persons on parole or judicial commitment status receiving supervision or treatment; administrators and supervision and treatment staff

The administrators and the supervision and treatment staff of the Forensic Conditional Release Program shall not be held criminally or civilly liable for any criminal acts committed by the persons on parole or judicial commitment status who receive supervision or treatment. This waiver of liability shall apply to employees of the State Department of Mental Health, the Board of Prison Terms, and the

agencies or persons under contract to those agencies, who provide screening, clinical evaluation, supervision, or treatment to mentally ill parolees or persons under judicial commitment or considered for placement under a hold by the Board of Prison Terms.
(Added by Stats.1985, c. 1416, § 6. Amended by Stats.1987, c. 687, § 4; Stats.1988, c. 37, § 3; Stats.1996, c. 462 (A.B.3130), § 2, eff. Sept. 13, 1996.)

§ 1619. Automation of criminal histories of persons treated in forensic conditional release program and mentally disordered offenders

The Department of Justice shall automate the criminal histories of all persons treated in the Forensic Conditional Release Program, as well as all persons committed as not guilty by reason of insanity pursuant to Section 1026, incompetent to stand trial pursuant to Section 1370 or 1370.2, any person currently under commitment as a mentally disordered sex offender, and persons treated pursuant to Section 1364 or 2684 or Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3.
(Added by Stats.1985, c. 1416, § 7. Amended by Stats.1987, c. 687, § 5; Stats.1988, c. 37, § 4.)

§ 1620. Access to criminal histories of mentally ill offenders receiving treatment and supervision by agencies providing treatment; confidentiality

The Department of Justice shall provide mental health agencies providing treatment to patients pursuant to Sections 1600 to 1610, inclusive, or pursuant to Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3, with access to criminal histories of those mentally ill offenders who are receiving treatment and supervision. Treatment and supervision staff who have access to these criminal histories shall maintain the confidentiality of the information and shall sign a statement to be developed by the Department of Justice which informs them of this obligation.
(Added by Stats.1985, c. 1416, § 8. Amended by Stats.1987, c. 687, § 6.)

PENAL CODE — IMPRISONMENT AND THE DEATH PENALTY

Part 3 OF IMPRISONMENT AND THE DEATH PENALTY

Title 1 IMPRISONMENT OF MALE PRISONERS IN STATE PRISONS

Chapter 4 TREATMENT OF PRISONERS

Article 3 DISPOSITION OF INSANE PRISONERS

§ 2684. Transfer to state hospital; mentally ill, mentally deficient, or insane prisoner; conviction of stalking; duration of treatment

(a) If, in the opinion of the Director of Corrections, the rehabilitation of any mentally ill, mentally deficient, or insane person confined in a state prison may be expedited by treatment at any one of the state hospitals under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the Director of Corrections, with the approval of the Board of Prison Terms for persons sentenced pursuant to subdivision (b) of Section 1168, shall certify that fact to the director of the appropriate department who shall evaluate the prisoner to determine if he or she would benefit from care and treatment in a state hospital. If the director of the appropriate department so determines, the superintendent of the hospital shall receive the prisoner and keep him or her until in the opinion of the superintendent the person has been treated to the extent that he or she will not benefit from further care and treatment in the state hospital.

(b) Whenever the Director of Corrections receives a recommendation from the court that a defendant convicted of a violation of Section 646.9 and sentenced to confinement in the state prison would benefit from treatment in a state hospital pursuant to subdivision (a), the director shall consider the recommendation. If appropriate, the director shall certify that the rehabilitation of the defendant may be expedited by treatment in a state hospital and subdivision (a) shall apply.
(Added by Stats.1941, c. 106, p. 1095, § 15. Amended by Stats.1953, c. 1666, p. 3392, § 10; Stats.1955, c. 483, p. 953, § 1; Stats.1977, c. 165, p. 659, § 32, eff. June 29, 1977, operative July 1, 1977; Stats.1977, c. 1252, p. 4444, § 362, operative July 1, 1978; Stats.1978, c. 429, p. 1335, § 160, eff. July 17, 1978, operative July 1, 1978; Stats.1979, c. 255, p. 554, § 14; Stats.1993, c. 581 (A.B.1178), § 2.)

§ 2685. Receipt of prisoner; administrative procedure; return to prison; time of hospitalization as part of sentence

Upon the receipt of a prisoner, as herein provided, the superintendent of the state hospital shall notify the Director of Corrections of that fact, giving his name, the date, the prison from which he was received, and from whose hands he was received. When in the opinion of the superintendent the mentally ill, mentally deficient or insane prisoner has been treated to such an extent that such person will not benefit by further care and treatment in the state hospital, the superintendent shall immediately notify the Director of Corrections of that fact. The Director of Corrections shall immediately send for, take and receive the prisoner back into prison. The time passed at the state hospital shall count as part of the prisoner's sentence.
(Added by Stats.1941, c. 106, p. 1095, § 15. Amended by Stats.1953, c. 1666, p. 3392, § 11; Stats.1955, c. 483, p. 954, § 2; Stats.1963, c. 372, p. 1163, § 15.)

Article 4 TEMPORARY REMOVAL OF PRISONERS

§ 2690. Order for removal; custody; duration; reimbursement of state

The Director of Corrections may authorize the temporary removal from prison or any other institution for the detention of adults under the jurisdiction of the Department of Corrections of any inmate, including removal for the purpose of attending college classes. The director may require that such temporary removal be under custody. Unless the inmate is removed for medical treatment, the removal shall not be for a period longer than three days. The director may require the inmate to reimburse the state, in whole or in part, for expenses incurred by the state in connection with such temporary removal other than for medical treatment.
(Added by Stats.1945, c. 103, p. 412, § 2. Amended by Stats.1953, c. 388, p. 1648, § 1; Stats.1961, c. 944, p. 2575, § 1; Stats.1963, c. 981, p. 2242, § 1; Stats.1965, c. 238, p. 1215, § 2; Stats.1965, c. 1469, p. 3434, § 1; Stats.1968, c. 530, p. 1184, § 1; Stats.1970, c. 830, p. 1563, § 1; Stats.1970, c. 1323, p. 2464, § 1, operative Jan. 1, 1972; Stats.1972, c. 1033, p. 1911, § 1.)

Chapter 7 EXECUTION OF SENTENCES OF IMPRISONMENT

Article 4 DISPOSITION OF MENTALLY DISORDERED PRISONERS UPON DISCHARGE

§ 2960. Legislative findings and declarations

The Legislature finds that there are prisoners who have a treatable, severe mental disorder that was one of the causes of, or was an aggravating factor in the commission of the crime for which they were incarcerated. Secondly, the Legislature finds that if the severe mental disorders of those prisoners are not in remission or cannot be kept in remission at the time of their parole or upon termination of parole, there is a danger to society, and the state has a compelling interest in protecting the public. Thirdly, the Legislature finds that in order to protect the public from those persons it is necessary to provide mental health treatment until the severe mental disorder which was one of the causes of or was an aggravating factor in the person's prior criminal behavior is in remission and can be kept in remission.

The Legislature further finds and declares the Department of Corrections should evaluate each prisoner for severe mental disorders during the first year of the prisoner's sentence, and that severely mentally disordered prisoners should be provided with an appropriate level of mental health treatment while in prison and when returned to the community.

(Added by Stats.1969, c. 872, p. 1714, § 1. Amended by Stats.1977, c. 1252, p. 4444, § 363, operative July 1, 1978; Stats.1982, c. 1529, p. 5952, § 3; Stats.1982, c. 1549, p. 6044, § 31; Stats.1985, c. 1419, § 1, operative July 1, 1986; Stats.1986, c. 858, § 1.)

§ 2962. Treatment by state department of mental health as condition of parole; criteria for prisoners

As a condition of parole, a prisoner who meets the following criteria shall be required to be treated by the State Department of Mental Health, and the State Department of Mental Health shall provide the necessary treatment:

(a) The prisoner has a severe mental disorder that is not in remission or cannot be kept in remission without treatment.

The term "severe mental disorder" means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. The term "severe mental disorder" as used in this section does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances.

The term "remission" means a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support. A person "cannot be kept in remission without treatment" if during the year prior to the question being before the Board of Prison Terms or a trial court, he or she has been in remission and he or she has been physically violent, except in self–defense, or he or she has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, or he or she has intentionally caused property damage, or he or she has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan.

(b) The severe mental disorder was one of the causes of or was an aggravating factor in the commission of a crime for which the prisoner was sentenced to prison.

(c) The prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release.

(d)(1) Prior to release on parole, the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of Mental Health have evaluated the prisoner at a facility of the Department of Corrections, and a chief psychiatrist of the Department of Corrections has certified to the Board of Prison Terms that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior, that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to his or her parole release day, and that by reason of his or her severe mental disorder the prisoner represents a substantial danger of physical harm to others. For prisoners being treated by the State Department of Mental Health pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections, and the evaluation shall be done at a state hospital by the person at the state hospital in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections.

(2) If the professionals doing the evaluation pursuant to paragraph (1) do not concur that (A) the prisoner has a severe mental disorder, (B) that the disorder is not in remission or cannot be kept in remission without treatment, or (C) that the severe mental disorder was a cause of, or aggravated, the prisoner's criminal behavior, and a chief psychiatrist has certified the prisoner to the Board of Prison Terms pursuant to this paragraph, then the Board of Prison Terms shall order a further examination by two independent professionals, as provided for in Section 2978.

(3) Only if both independent professionals who evaluate the prisoner pursuant to paragraph (2) concur with the chief psychiatrist's certification of the issues described in paragraph (2), shall this subdivision be applicable to the prisoner. The professionals appointed pursuant to Section 2978 shall inform the prisoner that the purpose of their examination is not treatment but to determine if the prisoner meets certain criteria to be involuntarily treated as a mentally disordered offender. It is not required that the prisoner appreciate or understand that information.

(e) The crime referred to in subdivision (b) meets both of the following criteria:

(1) The defendant received a determinate sentence pursuant to Section 1170 for the crime.

(2) The crime is one of the following:

(A) Voluntary manslaughter.

(B) Mayhem.

(C) Kidnapping in violation of Section 207.

(D) Any robbery wherein it was charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(E) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of the carjacking.

(F) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(G) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(H) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(I) Lewd acts on a child under the age of 14 years in violation of Section 288.

(J) Continuous sexual abuse in violation of Section 288.5.

(K) The offense described in subdivision (a) of Section 289 where the act was accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(L) Arson in violation of subdivision (a) of Section 451, or arson in violation of any other provision of Section 451 or in violation of Section 455 where the act posed a substantial danger of physical harm to others.

(M) Any felony in which the defendant used a firearm which use was charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.

(N) A violation of Section 12308.

(O) Attempted murder.

(P) A crime not enumerated in subparagraphs (A) to (O), inclusive, in which the prisoner used force or violence, or caused serious bodily injury as defined in paragraph (4) of subdivision (f) of Section 243.

(Q) A crime in which the perpetrator expressly or impliedly threatened another with the use of force or violence likely to produce substantial physical harm in such a manner that a reasonable person would believe and expect that the force or violence would be used. For purposes of this subparagraph, substantial physical harm shall not require proof that the threatened act was likely to cause great or serious bodily injury.

(f) As used in this chapter, "substantial danger of physical harm" does not require proof of a recent overt act.

(Added by Stats.1986, c. 858, § 2. Amended by Stats.1987, c. 687, § 7; Stats.1989, c. 228, § 1, eff. July 27, 1989; Stats.1991, c. 435 (A.B.655), § 2; Stats.1995, c. 761 (S.B.34), § 1; Stats.1998, c. 936 (A.B.105), § 16, eff. Sept. 28, 1998; Stats.1999, c. 16 (S.B.279), § 1, eff. April 22, 1999; Stats.2000, c. 135 (A.B.2539), § 137.)

§ 2964. Inpatient or outpatient treatment; hearing; informing prisoner of right; burden of proof

(a) The treatment required by Section 2962 shall be inpatient unless the State Department of Mental Health certifies to the Board of Prison Terms that there is reasonable cause to believe the parolee can be safely and effectively treated on an outpatient basis, in which case the Board of Prison Terms shall permit the State Department of Mental Health to place the parolee in an outpatient treatment program specified by the State Department of Mental Health. Any prisoner who is to be required to accept treatment pursuant to Section 2962 shall be informed in writing of his or her right to request a hearing pursuant to Section 2966. Prior to placing a parolee in a local outpatient program, the State Department of Mental Health shall consult with the local outpatient program as to the appropriate treatment plan. Notwithstanding any other law, a parolee ordered to have outpatient treatment pursuant to this section may be placed in an outpatient treatment program used to provide outpatient treatment under Title 15 (commencing with Section 1600) of Part 2, but the procedural provisions of Title 15 shall not apply. The community program director or a designee of an outpatient program used to provide treatment under Title 15 in which a parolee is placed, may place the parolee, or cause the parolee to be placed, in a secure mental health facility if the parolee can no longer be safely or effectively treated in the outpatient program, and until the parolee can be safely and effectively treated in the program. Upon the request of the community program director or a designee, a peace officer shall take the parolee into custody and transport the parolee, or cause the parolee to be taken into custody and transported, to a facility designated by the community program director, or a designee, for confinement under this section. Within 15 days after placement in a secure facility the State Department of Mental Health shall conduct a hearing on whether the parolee can be safely and effectively treated in the program unless the patient or the patient's attorney agrees to a continuance, or unless good cause exists that prevents the State Department of Mental Health from conducting the hearing within that period of time. If good cause exists, the hearing shall be held within 21 days after placement in a secure facility. For purposes of this section, "good cause" means the inability to secure counsel, an interpreter, or witnesses for the hearing within the 15–day time period. Before deciding to seek revocation of the parole of a parolee receiving mental health treatment pursuant to Section 2962, and return him or her to prison, the parole officer shall consult with the director of the parolee's outpatient program. Nothing in this section shall prevent hospitalization pursuant to Section 5150, 5250, or 5353 of the Welfare and Institutions Code.

(b) If the State Department of Mental Health has not placed a parolee on outpatient treatment within 60 days after receiving custody of the parolee or after parole is continued pursuant to Section 3001, the parolee may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing to determine whether the prisoner shall be treated as an inpatient or an outpatient. At the hearing, the burden shall be on the State Department of Mental Health to establish that the prisoner requires inpatient treatment as described in this subdivision. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in Section 2978.

(Added by Stats.1986, c. 858, § 3. Amended by Stats.1988, c. 657, § 1; Stats.1991, c. 435 (A.B.655), § 3.)

§ 2966. Treatment as condition of parole; hearing by board to prove prisoner meets criteria; judicial review; petition; procedure; jury trial; application to continuation of parole

(a) A prisoner may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing if so requested, for the purpose of proving that the prisoner meets the criteria in Section 2962. At the hearing, the burden of proof shall be on the person or agency who certified the prisoner under subdivision (d) of Section 2962. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in Section 2978. The prisoner shall be informed at the hearing of his or her right to request a trial pursuant to subdivision (b). The Board of Prison Terms shall provide a prisoner who requests a trial, a petition form and instructions for filing the petition.

(b) A prisoner who disagrees with the determination of the Board of Prison Terms that he or she meets the criteria of Section 2962, may file in the superior court of the county in which he or she is incarcerated or is being treated a petition for a hearing on whether he or she, as of the date of the Board of Prison Terms hearing, met the criteria of Section 2962. The court shall conduct a hearing on the petition within 60 calendar days after the petition is filed, unless either time is waived by the petitioner or his or her counsel, or good cause is shown. Evidence offered for the purpose of proving the prisoner's behavior or mental status subsequent to the Board of Prison Terms hearing shall not be considered. The order of the Board of Prison Terms shall be in effect until the completion of the court proceedings. The court shall advise the petitioner of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the petitioner shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing; however, in order to reduce costs, the rules of criminal discovery, as well as civil discovery, shall be applicable. The standard of proof shall be beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney. The court may, upon stipulation of both parties, receive in evidence the affidavit or declaration of any psychiatrist, psychologist, or other professional person who was involved in the certification and hearing process, or any professional person involved in the evaluation or treatment of the petitioner during the certification process. The court may allow the affidavit or declaration to be read and the contents thereof considered in the rendering of a decision or verdict in any proceeding held pursuant to subdivision (b) or (c), or subdivision (a) of Section 2972. If the court or jury reverses the determination of the Board of Prison Terms, the court shall stay the execution of the decision for five working days to allow for an orderly release of the prisoner.

(c) If the Board of Prison Terms continues a parolee's mental health treatment under Section 2962 when it continues the parolee's

parole under Section 3001, the procedures of this section shall only be applicable for the purpose of determining if the parolee has a severe mental disorder, whether the parolee's severe mental disorder is not in remission or cannot be kept in remission without treatment, and whether by reason of his or her severe mental disorder, the parolee represents a substantial danger of physical harm to others.
(Added by Stats.1986, c. 858, § 4. Amended by Stats.1987, c. 687, § 8; Stats.1988, c. 658, § 1; Stats.1989, c. 228, § 2, eff. July 27, 1989; Stats.1994, c. 706 (S.B.1918), § 1.)

§ 2968. Remission of prisoner's severe mental disorder; notice; discontinuation of treatment

If the prisoner's severe mental disorder is put into remission during the parole period, and can be kept in remission, the Director of Mental Health shall notify the Board of Prison Terms and the State Department of Mental Health shall discontinue treating the parolee.
(Added by Stats.1986, c. 858, § 5.)

§ 2970. Evaluation on remission where severe mental disorder is not in, or cannot be kept in, remission

Not later than 180 days prior to the termination of parole, or release from prison if the prisoner refused to agree to treatment as a condition of parole as required by Section 2962, unless good cause is shown for the reduction of that 180–day period, if the prisoner's severe mental disorder is not in remission or cannot be kept in remission without treatment, the medical director of the state hospital which is treating the parolee, or the community program director in charge of the parolee's outpatient program, or the Director of Corrections, shall submit to the district attorney of the county in which the parolee is receiving outpatient treatment, or for those in prison or in a state mental hospital, the district attorney of the county of commitment, his or her written evaluation on remission. If requested by the district attorney, the written evaluation shall be accompanied by supporting affidavits.

The district attorney may then file a petition with the superior court for continued involuntary treatment for one year. The petition shall be accompanied by affidavits specifying that treatment, while the prisoner was released from prison on parole, has been continuously provided by the State Department of Mental Health either in a state hospital or in an outpatient program. The petition shall also specify that the prisoner has a severe mental disorder, that the severe mental disorder is not in remission or cannot be kept in remission if the person's treatment is not continued, and that, by reason of his or her severe mental disorder, the prisoner represents a substantial danger of physical harm to others.
(Added by Stats.1985, c. 1418, § 1, operative July 1, 1986. Amended by Stats.1986, c. 858, § 6; Stats.1988, c. 657, § 2; Stats.1988, c. 658, § 2; Stats.1989, c. 228, § 3, eff. July 27, 1989; Stats.1991, c. 435 (A.B.655), § 4.)

§ 2972. Hearing on petition for continued treatment; jury trial; order; petition for recommitment; rights of patient; modification by regulations

(a) The court shall conduct a hearing on the petition under Section 2970 for continued treatment. The court shall advise the person of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the person shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing, however, in order to reduce costs the rules of criminal discovery, as well as civil discovery, shall be applicable.

The standard of proof under this section shall be proof beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney. The trial shall commence no later than 30 calendar days prior to the time the person would otherwise have been released, unless the time is waived by the person or unless good cause is shown.

(b) The people shall be represented by the district attorney. If the person is indigent, the county public defender shall be appointed.

(c) If the court or jury finds that the patient has a severe mental disorder, that the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment, and that by reason of his or her severe mental disorder, the patient represents a substantial danger of physical harm to others, the court shall order the patient recommitted to the facility in which the patient was confined at the time the petition was filed, or recommitted to the outpatient program in which he or she was being treated at the time the petition was filed, or committed to the State Department of Mental Health if the person was in prison. The commitment shall be for a period of one year from the date of termination of parole or a previous commitment or the scheduled date of release from prison as specified in Section 2970. Time spent on outpatient status, except when placed in a locked facility at the direction of the outpatient supervisor, shall not count as actual custody and shall not be credited toward the person's maximum term of commitment or toward the person's term of extended commitment.

(d) A person shall be released on outpatient status if the committing court finds that there is reasonable cause to believe that the committed person can be safely and effectively treated on an outpatient basis. Except as provided in this subdivision, the provisions of Title 15 (commencing with Section 1600) of Part 2, shall apply to persons placed on outpatient status pursuant to this paragraph. The standard for revocation under Section 1609 shall be that the person cannot be safely and effectively treated on an outpatient basis.

(e) Prior to the termination of a commitment under this section, a petition for recommitment may be filed to determine whether the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment, and whether by reason of his or her severe mental disorder, the patient represents a substantial danger of physical harm to others. The recommitment proceeding shall be conducted in accordance with the provisions of this section.

(f) Any commitment under this article places an affirmative obligation on the treatment facility to provide treatment for the underlying causes of the person's mental disorder.

(g) Except as provided in this subdivision, the person committed shall be considered to be an involuntary mental health patient and he or she shall be entitled to those rights set forth in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code. Commencing January 1, 1986, the State Department of Mental Health may adopt regulations to modify those rights as is necessary in order to provide for the reasonable security of the inpatient facility in which the patient is being held. This subdivision and the regulations adopted pursuant thereto shall become operative on January 1, 1987, except that regulations may be adopted prior to that date.
(Added by Stats.1986, c. 858, § 7. Amended by Stats.1987, c. 687, § 9; Stats.1989, c. 228, § 4, eff. July 27, 1989; Stats.2000, c. 324 (A.B.1881), § 3.)

§ 2972.1. Outpatient status; continuation, termination, or confinement to treatment facility; procedure

(a) Outpatient status for persons committed pursuant to Section 2972 shall be for a period not to exceed one year. Pursuant to Section 1606, at the end of a period of outpatient status approved by the court, the court shall, after actual notice to the prosecutor, the defense attorney, the community program director or a designee, the medical director of the facility that is treating the person, and the person on outpatient status, and after a hearing in court, either discharge the person from commitment under appropriate provisions of law, order the person confined to a treatment facility, or renew its approval of outpatient status.

(b) Prior to the hearing described in subdivision (a), the community program director or a designee shall furnish a report and recommendation to the court, the prosecution, the defense attorney, the medical director of the facility that is treating the person, and the

person on outpatient status. If the recommendation is that the person continue on outpatient status or be confined to a treatment facility, the report shall also contain a statement that conforms with requirements of subdivision (c).

(c)(1) Upon receipt of a report prepared pursuant to Section 1606 that recommends confinement or continued outpatient treatment, the court shall direct prior defense counsel, or, if necessary, appoint new defense counsel, to meet and confer with the person who is on outpatient status and explain the recommendation contained therein. Following this meeting, both defense counsel and the person on outpatient status shall sign and return to the court a form which shall read as follows:

"Check One:

"____ I do not believe that I need further treatment and I demand a jury trial to decide this question.

"____ I accept the recommendation that I continue treatment."

(2) The signed form shall be returned to the court at least 10 days prior to the hearing described in subdivision (a). If the person on outpatient status refuses or is unable to sign the form, his or her counsel shall indicate, in writing, that the form and the report prepared pursuant to Section 1606 were explained to the person and the person refused or was unable to sign the form.

(d) If the person on outpatient status either requests a jury trial or fails to waive his or her right to a jury trial, a jury trial meeting all of the requirements of Section 2972 shall be set within 60 days of the initial hearing.

(e) The trier of fact, or the court if trial is waived, shall determine whether or not the requirements of subdivisions (c) and (d) of Section 2972 have been met. The court shall then make an appropriate disposition under subdivision (a) of this section.

(f) The court shall notify the community program director or a designee, the person on outpatient status, and the medical director or person in charge of the facility providing treatment of the person whether or not the person was found suitable for release.

(Added by Stats.2000, c. 324 (A.B.1881), § 4.)

§ 2974. Placement of certain inmates prior to release or parolees in state hospital; probable cause

Before releasing any inmate or terminating supervision of any parolee who is a danger to self or others, or gravely disabled as a result of mental disorder and who does not come within the provisions of Section 2962, the Director of Corrections may, upon probable cause, place, or cause to be placed, the person in a state hospital pursuant to the Lanterman–Petris–Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(Added by Stats.1986, c. 858, § 8.)

§ 2976. Cost of treatment; state expense; inpatient treatment of person placed outside of department of corrections facility not deemed release from imprisonment or custody

(a) The cost of inpatient or outpatient treatment under Section 2962 or 2972 shall be a state expense while the person is under the jurisdiction of the Department of Corrections or the State Department of Mental Health.

(b) Any person placed outside of a facility of the Department of Corrections for the purposes of inpatient treatment under this article shall not be deemed to be released from imprisonment or from the custody of the Department of Corrections prior to the expiration of the maximum term of imprisonment of the person.

(Added by Stats.1986, c. 858, § 9. Amended by Stats.1991, c. 435 (A.B.655), § 5.)

§ 2978. Independent professionals appointed by board of prison terms; qualifications; list

(a) Any independent professionals appointed by the Board of Prison Terms for purposes of this article shall not be state government employees; shall have at least five years of experience in the diagnosis and treatment of mental disorders; and shall include psychiatrists, and licensed psychologists who have a doctoral degree in psychology.

(b) On July 1 of each year the Department of Corrections and the State Department of Mental Health shall submit to the Board of Prison Terms a list of 20 or more independent professionals on which both departments concur. The professionals shall not be state government employees and shall have at least five years of experience in the diagnosis and treatment of mental disorders and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. For purposes of this article, when the Board of Prison Terms receives the list, they shall only appoint independent professionals from the list. The list shall not be binding on the Board of Prison Terms until they have received it, and shall not be binding after June 30 following receipt of the list.

(Added by Stats.1986, c. 858, § 10. Amended by Stats.1987, c. 687, § 10.)

§ 2980. Application of article

This article applies to persons who committed their crimes on and after January 1, 1986.

(Added by Stats.1986, c. 858, § 11. Amended by Stats.1989, c. 228, § 5, eff. July 27, 1989.)

§ 2981. Proof of treatment within year prior to parole or release; certified prison or state hospital records or copies

For the purpose of proving the fact that a prisoner has received 90 days or more of treatment within the year prior to the prisoner's parole or release, the records or copies of records of any state penitentiary, county jail, federal penitentiary, or state hospital in which that person has been confined, when the records or copies thereof have been certified by the official custodian of those records, may be admitted as evidence.

(Added by Stats.1987, c. 687, § 11.)

Title 4 COUNTY JAILS, FARMS AND CAMPS

Chapter 1 COUNTY JAILS

§ 4011.6. Treatment and evaluation of prisoner; notice; confidential reports; remand to facility; effect on sentence

In any case in which it appears to the person in charge of a county jail, city jail, or juvenile detention facility, or to any judge of a court in the county in which the jail or juvenile detention facility is located, that a person in custody in that jail or juvenile detention facility may be mentally disordered, he or she may cause the prisoner to be taken to a facility for 72–hour treatment and evaluation pursuant to Section 5150 of the Welfare and Institutions Code and he or she shall inform the facility in writing, which shall be confidential, of the reasons that the person is being taken to the facility. The local mental health director or his or her designee may examine the prisoner prior to transfer to a facility for treatment and evaluation. Upon transfer to a facility, Article 1 (commencing with Section 5150), Article 4 (commencing with Section 5250), Article 4.5 (commencing with Section 5260), Article 5 (commencing with Section 5275), Article 6 (commencing with Section 5300), and Article 7 (commencing with Section 5325) of Chapter 2 and Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code shall apply to the prisoner.

Where the court causes the prisoner to be transferred to a 72–hour facility, the court shall forthwith notify the local mental health director or his or her designee, the prosecuting attorney, and counsel for the prisoner in the criminal or juvenile proceedings about that transfer. Where the person in charge of the jail or juvenile detention facility causes the transfer of the prisoner to a 72–hour facility the person shall immediately notify the local mental health director or his or her designee and each court within the county where the prisoner has a

pending proceeding about the transfer. Upon notification by the person in charge of the jail or juvenile detention facility the court shall forthwith notify counsel for the prisoner and the prosecuting attorney in the criminal or juvenile proceedings about that transfer.

If a prisoner is detained in, or remanded to, a facility pursuant to those articles of the Welfare and Institutions Code, the facility shall transmit a report, which shall be confidential, to the person in charge of the jail or juvenile detention facility or judge of the court who caused the prisoner to be taken to the facility and to the local mental health director or his or her designee, concerning the condition of the prisoner. A new report shall be transmitted at the end of each period of confinement provided for in those articles, upon conversion to voluntary status, and upon filing of temporary letters of conservatorship.

A prisoner who has been transferred to an inpatient facility pursuant to this section may convert to voluntary inpatient status without obtaining the consent of the court, the person in charge of the jail or juvenile detention facility, or the local mental health director. At the beginning of that conversion to voluntary status, the person in charge of the facility shall transmit a report to the person in charge of the jail or juvenile detention facility or judge of the court who caused the prisoner to be taken to the facility, counsel for the prisoner, prosecuting attorney, and local mental health director or his or her designee.

If the prisoner is detained in, or remanded to, a facility pursuant to those articles of the Welfare and Institutions Code, the time passed in the facility shall count as part of the prisoner's sentence. When the prisoner is detained in, or remanded to, the facility, the person in charge of the jail or juvenile detention facility shall advise the professional person in charge of the facility of the expiration date of the prisoner's sentence. If the prisoner is to be released from the facility before the expiration date, the professional person in charge shall notify the local mental health director or his or her designee, counsel for the prisoner, the prosecuting attorney, and the person in charge of the jail or juvenile detention facility, who shall send for, take, and receive the prisoner back into the jail or juvenile detention facility.

A defendant, either charged with or convicted of a criminal offense, or a minor alleged to be within the jurisdiction of the juvenile court, may be concurrently subject to the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

If a prisoner is detained in a facility pursuant to those articles of the Welfare and Institutions Code and if the person in charge of the facility determines that arraignment or trial would be detrimental to the well–being of the prisoner, the time spent in the facility shall not be computed in any statutory time requirements for arraignment or trial in any pending criminal or juvenile proceedings. Otherwise, this section shall not affect any statutory time requirements for arraignment or trial in any pending criminal or juvenile proceedings.

For purposes of this section, the term "juvenile detention facility" includes any state, county, or private home or institution in which wards or dependent children of the juvenile court or persons awaiting a hearing before the juvenile court are detained.

(Added by Stats.1963, c. 1731, p. 3451, § 1. Amended by Stats.1968, c. 1374, p. 2637, § 4; Stats.1970, c. 1027, p. 3440, § 3.5; Stats.1971, c. 1117, p. 2131, § 1; Stats.1974, c. 22, p. 36, § 1; Stats.1975, c. 1258, p. 3297, § 2; Stats.1976, c. 445, p. 1176, § 1, eff. July 10, 1976; Stats.1987, c. 828, § 132; Stats.1988, c. 160, § 138.)

§ 4011.7. Removal of guard from hospitalized prisoner; escape

Notwithstanding the provisions of Sections 4011 and 4011.5, when it appears that the prisoner in need of medical or surgical treatment necessitating hospitalization or in need of medical or hospital care was arrested for, charged with, or convicted of an offense constituting a misdemeanor, the court in proceedings under Section 4011 or the sheriff or jailer in action taken under Section 4011.5 may direct that the guard be removed from the prisoner while he is in the hospital. If such direction is given, any such prisoner who knowingly escapes or attempts to escape from such hospital shall upon conviction thereof be guilty of a misdemeanor and punishable by imprisonment for not to exceed one year in the county jail if such escape or attempt to escape was not by force or violence. However, if such escape is by force or violence such prisoner shall be guilty of a felony and punishable by imprisonment in the state prison, or in the county jail for not exceeding one year; provided, that when such second term of imprisonment is to be served in the county jail it shall commence from the time such prisoner would otherwise be discharged from such jail.

(Added by Stats.1968, c. 741, p. 1445, § 1. Amended by Stats.1980, c. 1117, § 15.)

§ 4011.8. Voluntary application for inpatient or outpatient mental health services; consent; notice; effect on sentence; denial of application

A person in custody who has been charged with or convicted of a criminal offense may make voluntary application for inpatient or outpatient mental health services in accordance with Section 5003 of the Welfare and Institutions Code. If such services require absence from the jail premises, consent from the person in charge of the jail or from any judge of a court in the county in which the jail is located, and from the director of the county mental health program in which services are to be rendered, shall be obtained. The local mental health director or his designee may examine the prisoner prior to transfer from the jail.

Where the court approves voluntary treatment for a jail inmate for whom criminal proceedings are pending, the court shall forthwith notify counsel for the prisoner and the prosecuting attorney about such approval. Where the person in charge of the jail approves voluntary treatment for a prisoner for whom criminal proceedings are pending, the person in charge of the jail shall immediately notify each court within the county where the prisoner has a pending proceeding about such approval; upon notification by the jailer the court shall forthwith notify the prosecuting attorney and counsel for the prisoner in the criminal proceedings about such transfer.

If the prisoner voluntarily obtains treatment in a facility or is placed on outpatient treatment pursuant to Section 5003 of the Welfare and Institutions Code, the time passed therein shall count as part of the prisoner's sentence. When the prisoner is permitted absence from the jail for voluntary treatment, the person in charge of the jail shall advise the professional person in charge of the facility of the expiration date of the prisoner's sentence. If the prisoner is to be released from the facility before such expiration date, the professional person in charge shall notify the local mental health director or his designee, counsel for the prisoner, the prosecuting attorney, and the person in charge of the jail, who shall send for, take, and receive the prisoner back into the jail.

A denial of an application for voluntary mental health services shall be reviewable only by mandamus.

(Added by Stats.1975, c. 1258, p. 3299, § 3.)

Title 5 OFFENSES RELATING TO PRISONS AND PRISONERS

Chapter 2 ESCAPES AND RESCUES

Article 1 ESCAPES

§ 4536. Mental health facility

(a) Every person committed to a state hospital or other public or private mental health facility as a mentally disordered sex offender, who escapes from or who escapes while being conveyed to or from such state hospital or other public or private mental health facility, is punishable by imprisonment in the state prison or in the county jail not to exceed one year. The term imposed pursuant to this section shall be served consecutively to any other sentence or commitment.

(b) The medical director or person in charge of a state hospital or other public or private mental health facility to which a person has been committed as a mentally disordered sex offender shall promptly notify the chief of police of the city in which the hospital or facility is located, or the sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the chief of police or sheriff in apprehending the person, and shall, within 48 hours of the escape of the person, orally notify the court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.
(Added by Stats.1981, c. 1054, § 4.)

§ 4536.5. Mental health facility; sexually violent predator; escape; notification

The medical director or person in charge of a state hospital or other public or private mental health facility to which a person has been committed under the provisions of Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of the Welfare and Institutions Code, shall promptly notify the Department of Corrections' Sexually Violent Predator Parole Coordinator, the chief of police of the city in which the hospital or facility is located, or the sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the chief of police or sheriff in apprehending the person, and shall, within 48 hours of the escape of the person, orally notify the court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.
(Added by Stats.1998, c. 961 (S.B.1976), § 1, eff. Sept. 29, 1998. Amended by Stats.1999, c. 83 (S.B.966), § 156.)

Title 7 ADMINISTRATION OF THE STATE CORRECTIONAL SYSTEM

Chapter 2 THE * * * SECRETARY OF THE DEPARTMENT OF CORRECTIONS AND REHABILITATION

§ 5058.5. Physicians and surgeons; additional services which may be provided

In addition to the services rendered by physicians and surgeons, including psychiatrists, or by psychologists, pursuant to Sections 5068 and 5079, physicians and surgeons, including psychiatrists and psychologists, employed by, or under contract to provide mental health services to, the Department of Corrections may also provide the following medically or psychologically necessary services: prescreening of mental disorders; determination of the mental competency of inmates to participate in classification hearings; evaluation of parolees during temporary detention; determining whether mental health treatment should be a condition of parole; and such other services as may be required which are consistent with their licensure.
(Added by Stats.1984, c. 1123, § 2.)

§ 5068.5. Persons employed or under contract to provide mental health services, supervision or consultation on such services; qualifications; exemptions

(a) Notwithstanding any other provision of law, except as provided in subdivision (b), any person employed or under contract to provide diagnostic, treatment, or other mental health services in the state or to supervise or provide consultation on these services in the state correctional system shall be a physician and surgeon, a psychologist, or other health professional, licensed to practice in this state.

(b) Notwithstanding Section 5068 or Section 704 of the Welfare and Institutions Code, the following persons are exempt from the requirements of subdivision (a), so long as they continue in employment in the same class and in the same department:

(1) Persons employed on January 1, 1985, as psychologists to provide diagnostic or treatment services including those persons on authorized leave but not including intermittent personnel.

(2) Persons employed on January 1, 1989, to supervise or provide consultation on the diagnostic or treatment services including persons on authorized leave but not including intermittent personnel.

(c) The requirements of subdivision (a) may be waived in order for a person to gain qualifying experience for licensure as a psychologist or clinical social worker in this state in accordance with Section 1277 of the Health and Safety Code.
(Added by Stats.1984, c. 1123, § 4. Amended by Stats.1987, c. 828, § 153; Stats.1988, c. 473, § 1; Stats.1989, c. 1360, § 120; Stats.2000, c. 356 (A.B.1975), § 2, eff. Sept. 8, 2000.)

Chapter 3 THE BOARD OF * * * PAROLE HEARINGS

§ 5079. Psychiatric and diagnostic clinic; facilities and personnel; administration; duties; recommendations

The Director of Corrections shall provide facilities and licensed professional personnel for a psychiatric and diagnostic clinic and such branches thereof as may be required at one or more of the state prisons or institutions under the jurisdiction of the Department of Corrections. The director shall have full administrative authority and responsibility for operation of the clinics. All required mental health treatment or diagnostic services shall be provided under the supervision of a psychiatrist licensed to practice in this state, or a psychologist licensed to practice in this state and who holds a doctoral degree and has at least two years of experience in the diagnosis and treatment of emotional and mental disorders. All such clinics shall be under the direction of such a psychiatrist or psychologist. A psychiatrist shall be available to assume responsibility for all acts of diagnosis or treatment which may only be performed by a licensed physician and surgeon.

The work of the clinic shall include a scientific study of each prisoner, his or her career and life history, the cause of his or her criminal acts and recommendations for his or her care, training, and employment with a view to his or her reformation and to the protection of society. The recommendation shall be submitted to the Director of Corrections and shall not be effective until approved by the director. The Director of Corrections may modify or reject the recommendations as he or she sees fit.
(Added by Stats.1944, 3rd Ex.Sess., c. 2, p. 16, § 1. Amended by Stats.1945, c. 322, p. 781, § 3; Stats.1949, c. 869, p. 1643, § 2; Stats.1953, c. 1666, p. 3396, § 27; Stats.1984, c. 1123, § 5.)

PENAL CODE — PREVENTION AND APPREHENSION

Part 4 PREVENTION OF CRIMES AND APPREHENSION OF CRIMINALS

Title 4 STANDARDS AND TRAINING OF LOCAL LAW ENFORCEMENT OFFICERS

Chapter 1 COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Article 2 FIELD SERVICES AND STANDARDS FOR RECRUITMENT AND TRAINING

§ 13510.5. Rules of minimum standards; certain peace officers

For the purpose of maintaining the level of competence of state law enforcement officers, the commission shall adopt, and may, from time to time amend, rules establishing minimum standards for training of peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who are employed by any railroad company, the California State Police Division, the University of California Police Department, a California State University police department, the Department of Alcoholic Beverage Control, the Division of Investigation of the Department of Consumer Affairs, the Wildlife Protection Branch of the Department of Fish and Game, the Department of Forestry and Fire Protection, including the Office of the State Fire Marshal, the Department of Motor Vehicles, the California Horse Racing Board, the Bureau of Food and Drug, the Division of Labor Law Enforcement, the Director of Parks and Recreation, the State Department of Health Services, the Department of Toxic Substances Control, the State Department of Social Services, the State Department of Mental Health, the State Department of Developmental Services, the State Department of Alcohol and Drug Programs, the Office of Statewide Health Planning and Development, and the Department of Justice. All rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats.1975, c. 1172, p. 2894, § 1. Amended by Stats.1979, c. 229, p. 483, § 2; Stats.1983, c. 143, § 211; Stats.1992, c. 427 (A.B.3355), § 135; Stats.1993, c. 409 (A.B.2308), § 3, eff. Sept. 17, 1993; Gov.Reorg.Plan No. 1 of 1995, § 55, eff. July 12, 1995; Gov.Reorg.Plan No. 3 of 1995, § 8, eff. Sept. 6, 1995; Stats.1996, c. 305 (A.B.3103), § 56; Stats.1996, c. 332 (A.B.3080), § 33.)

§ 13515.25. Mentally disabled persons; law enforcement interaction; training course

(a) By July 1, 2006, the Commission on Peace Officer Standards and Training shall establish and keep updated a continuing education classroom training course relating to law enforcement interaction with mentally disabled persons. The training course shall be developed by the commission in consultation with appropriate community, local, and state organizations and agencies that have expertise in the area of mental illness and developmental disability, and with appropriate consumer and family advocate groups. In developing the course, the commission shall also examine existing courses certified by the commission that relate to mentally disabled persons. The commission shall make the course available to law enforcement agencies in California.

(b) The course described in subdivision (a) shall consist of classroom instruction and shall utilize interactive training methods to ensure that the training is as realistic as possible. The course shall include, at a minimum, core instruction in all of the following:

(1) The cause and nature of mental illnesses and developmental disabilities.

(2) How to identify indicators of mental disability and how to respond appropriately in a variety of common situations.

(3) Conflict resolution and de–escalation techniques for potentially dangerous situations involving mentally disabled persons.

(4) Appropriate language usage when interacting with mentally disabled persons.

(5) Alternatives to lethal force when interacting with potentially dangerous mentally disabled persons.

(6) Community and state resources available to serve mentally disabled persons and how these resources can be best utilized by law enforcement to benefit the mentally disabled community.

(7) The fact that a crime committed in whole or in part because of an actual or perceived disability of the victim is a hate crime punishable under Title 11.6 (commencing with Section 422.55) of Part 1.

(c) The commission shall submit a report to the Legislature by October 1, 2004, that shall include all of the following:

(1) A description of the process by which the course was established, including a list of the agencies and groups that were consulted.

(2) Information on the number of law enforcement agencies that utilized, and the number of officers that attended, the course or other courses certified by the commission relating to mentally disabled persons from July 1, 2001, to July 1, 2003, inclusive.

(3) Information on the number of law enforcement agencies that utilized, and the number of officers that attended, courses certified by the commission relating to mentally disabled persons from July 1, 2000, to July 1, 2001, inclusive.

(4) An analysis of the Police Crisis Intervention Training (CIT) Program used by the San Francisco and San Jose Police Departments, to assess the training used in these programs and compare it with existing courses offered by the commission in order to evaluate the adequacy of mental disability training available to local law enforcement officers.

(d) The Legislature encourages law enforcement agencies to include the course created in this section, and any other course certified by the commission relating to mentally disabled persons, as part of their advanced officer training program.

(e) It is the intent of the Legislature to reevaluate, on the basis of its review of the report required in subdivision (c), the extent to which law enforcement officers are receiving adequate training in how to interact with mentally disabled persons.

(Added by Stats.2000, c. 200 (A.B.1718), § 1. Amended by Stats.2003, c. 269 (A.B.1102), § 2, eff. Sept. 4, 2003; Stats.2004, c. 700 (S.B.1234), § 27.)

§ 13519.2. Persons with developmental disabilities or mental illness; training course and guidelines

(a) The commission shall, on or before July 1, 1990, include in the basic training course for law enforcement officers, adequate instruction in the handling of persons with developmental disabilities or mental illness, or both. Officers who complete the basic training prior to July 1, 1990, shall participate in supplementary training on this topic. This supplementary training shall be completed on or before July 1, 1992. Further training courses to update this instruction shall be established, as deemed necessary by the commission.

(b) The course of instruction relating to the handling of developmentally disabled or mentally ill persons shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in this area. In addition to providing instruction on the handling of these persons, the course shall also include information on the cause and nature of developmental disabilities and mental illness, as well as the community resources available to serve these persons.
(Added by Stats.1988, c. 593, § 1.)

PROBATE CODE

Division 2 GENERAL PROVISIONS

Part 17 LEGAL MENTAL CAPACITY

§ 810. Findings and declarations; capabilities of persons with mental or physical disorders; judicial determination; evidence

The Legislature finds and declares the following:

(a) For purposes of this part, there shall exist a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions.

(b) A person who has a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions.

(c) A judicial determination that a person is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder.

(Added by Stats.1995, c. 842 (S.B.730), § 2. Amended by Stats.1998, c. 581 (A.B.2801), § 19.)

§ 811. Deficits in mental functions

(a) A determination that a person is of unsound mind or lacks the capacity to make a decision or do a certain act, including, but not limited to, the incapacity to contract, to make a conveyance, to marry, to make medical decisions, to execute wills, or to execute trusts, shall be supported by evidence of a deficit in at least one of the following mental functions, subject to subdivision (b), and evidence of a correlation between the deficit or deficits and the decision or acts in question:

(1) Alertness and attention, including, but not limited to, the following:

(A) Level of arousal or consciousness.

(B) Orientation to time, place, person, and situation.

(C) Ability to attend and concentrate.

(2) Information processing, including, but not limited to, the following:

(A) Short– and long–term memory, including immediate recall.

(B) Ability to understand or communicate with others, either verbally or otherwise.

(C) Recognition of familiar objects and familiar persons.

(D) Ability to understand and appreciate quantities.

(E) Ability to reason using abstract concepts.

(F) Ability to plan, organize, and carry out actions in one's own rational self–interest.

(G) Ability to reason logically.

(3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:

(A) Severely disorganized thinking.

(B) Hallucinations.

(C) Delusions.

(D) Uncontrollable, repetitive, or intrusive thoughts.

(4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances.

(b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.

(c) In determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to do a certain act, the court may take into consideration the frequency, severity, and duration of periods of impairment.

(d) The mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act.

(e) This part applies only to the evidence that is presented to, and the findings that are made by, a court determining the capacity of a person to do a certain act or make a decision, including, but not limited to, making medical decisions. Nothing in this part shall affect the decisionmaking process set forth in Section 1418.8 of the Health and Safety Code, nor increase or decrease the burdens of documentation on, or potential liability of, health care providers who, outside the judicial context, determine the capacity of patients to make a medical decision.

(Added by Stats.1996, c. 178 (S.B.1650), § 3. Amended by Stats.1998, c. 581 (A.B.2801), § 20.)

§ 812. Capacity to make decisions

Except where otherwise provided by law, including, but not limited to, Section 813 and the statutory and decisional law of testamentary capacity, a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following:

(a) The rights, duties, and responsibilities created by, or affected by the decision.

(b) The probable consequences for the decisionmaker and, where appropriate, the persons affected by the decision.

(c) The significant risks, benefits, and reasonable alternatives involved in the decision.

(Added by Stats.1996, c. 178 (S.B.1650), § 5.)

§ 813. Capacity to give informed consent to proposed medical treatment; judicial determination

(a) For purposes of a judicial determination, a person has the capacity to give informed consent to a proposed medical treatment if the person is able to do all of the following:

(1) Respond knowingly and intelligently to queries about that medical treatment.

(2) Participate in that treatment decision by means of a rational thought process.

(3) Understand all of the following items of minimum basic medical treatment information with respect to that treatment:

(A) The nature and seriousness of the illness, disorder, or defect that the person has.

(B) The nature of the medical treatment that is being recommended by the person's health care providers.

(C) The probable degree and duration of any benefits and risks of any medical intervention that is being recommended by the person's health care providers, and the consequences of lack of treatment.

(D) The nature, risks, and benefits of any reasonable alternatives.

(b) A person who has the capacity to give informed consent to a proposed medical treatment also has the capacity to refuse consent to that treatment.

(Added by Stats.1995, c. 842 (S.B.730), § 5. Amended by Stats.1996, c. 178 (S.B.1650), § 6.)

PROBATE CODE — GUARDIANSHIP CONSERVATORSHIP LAW

Division 4 GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE PROCEEDINGS

Part 1 DEFINITIONS AND GENERAL PROVISIONS

Chapter 1 SHORT TITLE AND DEFINITIONS

§ 1400. Guardianship–conservatorship law

The portion of this division consisting of Part 1 (commencing with Section 1400), Part 2 (commencing with Section 1500), Part 3 (commencing with Section 1800), and Part 4 (commencing with Section 2100) may be cited as the Guardianship–Conservatorship Law.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1401. Application of definitions

Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this division.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1403. Absentee

"Absentee" means either of the following:

(a) A member of a uniformed service covered by United States Code, Title 37, Chapter 10, who is determined thereunder by the secretary concerned, or by the authorized delegate thereof, to be in missing status as missing status is defined therein.

(b) An employee of the United States government or an agency thereof covered by United States Code, Title 5, Chapter 55, Subchapter VII, who is determined thereunder by the head of the department or agency concerned, or by the authorized delegate thereof, to be in missing status as missing status is defined therein.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1418. Court

"Court," when used in connection with matters in the guardianship or conservatorship proceeding, means the court in which such proceeding is pending.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1419. Court investigator

"Court investigator" means the person referred to in Section 1454.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1419.5. Custodial parent

"Custodial parent" means the parent who either (a) has been awarded sole legal and physical custody of the child in another proceeding, or (b) with whom the child resides if there is currently no operative custody order. If the child resides with both parents, then they are jointly the custodial parent.

(Added by Stats.1993, c. 978 (S.B.305), § 1.)

§ 1420. Developmental disability

"Developmental disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term includes mental retardation, cerebral palsy, epilepsy, and autism. This term also includes handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but does not include other handicapping conditions that are solely physical in nature.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1424. Interested person

"Interested person" includes, but is not limited to:

(a) Any interested state, local, or federal entity or agency.

(b) Any interested public officer or employee of this state or of a local public entity of this state or of the federal government.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1430. Petition

"Petition" includes an application or request in the nature of a petition.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1431. Proceedings to establish a limited conservatorship

"Proceedings to establish a limited conservatorship" include proceedings to modify or revoke the powers or duties of a limited conservator.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1440. Secretary concerned

"Secretary concerned" has the same meaning as provided in United States Code, Title 37, Section 101.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1446. Single–premium deferred annuity

"Single–premium deferred annuity" means an annuity offered by an admitted life insurer for the payment of a one–time lump–sum premium and for which the insurer neither assesses any initial charges or administrative fees against the premium paid nor exacts or assesses any penalty for withdrawal of any funds by the annuitant after a period of five years.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

Chapter 3 NOTICES

§ 1460. Notice of time and place; mailing; posting; special notice; dispensation

(a) Subject to Sections 1202 and 1203, if notice of hearing is required under this division but the applicable provision does not fix the manner of giving notice of hearing, the notice of the time and place of the hearing shall be given at least 15 days before the day of the hearing as provided in this section.

(b) Subject to subdivision (e), the petitioner, who includes for the purposes of this section a person filing a petition, report, or account, shall cause the notice of hearing to be mailed to each of the following persons:

(1) The guardian or conservator.

(2) The ward or the conservatee.

(3) The spouse of the ward or conservatee, if the ward or conservatee has a spouse, or the domestic partner of the conservatee, if the conservatee has a domestic partner.

(4) Any person who has requested special notice of the matter, as provided in Section 2700.

(5) For any hearing on a petition to terminate a guardianship, to accept the resignation of, or to remove the guardian, the persons described in subdivision (c) of Section 1510.

(6) For any hearing on a petition to terminate a conservatorship, to accept the resignation of, or to remove the conservator, the persons described in subdivision (b) of Section 1821.

(c) The clerk of the court shall cause the notice of the hearing to be posted as provided in Section 1230 if the posting is required by subdivision (c) of Section 2543.

(d) Except as provided in subdivision (e), nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Chapter 10 (commencing with Section 2700) of Part 4.

(e) The court for good cause may dispense with the notice otherwise required to be given to a person as provided in this section.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1994, c. 806 (A.B.3686), § 8; Stats.1996, c. 862 (A.B.2751), § 5; Stats.2001, c. 893 (A.B.25), § 14.)

§ 1460.1. Children under 12 years of age; exceptions to notice requirements

Notwithstanding any other provision of this division, no notice is required to be given to any child under the age of 12 years if the court determines either of the following:

(a) Notice was properly given to a parent, guardian, or other person having legal custody of the minor, with whom the minor resides.

(b) The petition is brought by a parent, guardian, or other person having legal custody of the minor, with whom the minor resides.
(Added by Stats.1997, c. 724 (A.B.1172), § 9.)

§ 1461. Notice to director; conditions; certificate; limitations

(a) As used in this section, "director" means:

(1) The Director of Mental Health when the state hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Mental Health.

(2) The Director of Developmental Services when the state hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Developmental Services.

(b) Notice of the time and place of hearing on the petition, report, or account, and a copy of the petition, report, or account, shall be mailed to the director at the director's office in Sacramento at least 15 days before the hearing if both of the following conditions exist:

(1) The ward or conservatee is or has been during the guardianship or conservatorship proceeding a patient in, or on leave from, a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services.

(2) The petition, report, or account is filed under any one or more of the following provisions: Section 1510, 1820, 1861, 2212, 2403, 2421, 2422, or 2423; Article 7 (commencing with Section 2540) of Chapter 6 of Part 4; Section 2580, 2592, or 2620; Chapter 9.5 (commencing with Section 2670) of Part 4; Section 3080 or 3088; or Chapter 3 (commencing with Section 3100) of Part 6. Notice under this section is not required in the case of an account pursuant to Section 2620 if the total guardianship or conservatorship assets are less than one thousand five hundred dollars ($1,500) and the gross annual income, exclusive of any public assistance income, is less than six thousand dollars ($6,000), and the ward or conservatee is not a patient in, or on leave or on outpatient status from, a state hospital at the time of the filing of the petition.

(c) If the ward or conservatee has been discharged from the state hospital, the director, upon ascertaining the facts, may file with the court a certificate stating that the ward or conservatee is not indebted to the state and waive the giving of further notices under this section. Upon the filing of the certificate of the director, compliance with this section thereafter is not required unless the certificate is revoked by the director and notice of the revocation is filed with the court.

(d) The statute of limitations does not run against any claim of the State Department of Mental Health or the State Department of Developmental Services against the estate of the ward or conservatee for board, care, maintenance, or transportation with respect to an account that is settled without giving the notice required by this section.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1461.4. Regional center for developmentally disabled; notice of hearing and copy of petition; report and recommendation

(a) The petitioner shall mail or personally serve a notice of the hearing and a copy of the petition to the director of the regional center for the developmentally disabled at least 30 days before the day of the hearing on a petition for appointment in any case in which all of the following conditions exist:

(1) The proposed ward or conservatee has developmental disabilities.

(2) The proposed guardian or conservator is not the natural parent of the proposed ward or conservatee.

(3) The proposed guardian or conservator is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or is a spouse or employee of a provider.

(4) The proposed guardian or conservator is not a public entity.

(b) The regional center shall file a written report and recommendation with the court regarding the suitability of the petitioners to meet the needs of the proposed ward or conservatee in any case described in subdivision (a).
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1461.5. Veterans Administration; notice of hearing on petition, report, account or inventory; time; conditions

Notice of the time and place of hearing on a petition, report, or account, and a notice of the filing of an inventory, together with a copy of the petition, report, inventory, or account, shall be mailed to the office of the Veterans Administration having jurisdiction over the area in which the court is located at least 15 days before the hearing, or within 15 days after the inventory is filed, if both of the following conditions exist:

(a) The guardianship or conservatorship estate consists or will consist wholly or in part of any of the following:

(1) Money received from the Veterans Administration.

(2) Revenue or profit from such money or from property acquired wholly or in part from such money.

(3) Property acquired wholly or in part with such money or from such property.

(b) The petition, report, inventory, or account is filed under any one or more of the following provisions: Section 1510, 1601, 1820, 1861, 1874, 2422, or 2423; Article 7 (commencing with Section 2540) of Chapter 6 of Part 4; Section 2570, 2571, 2580, 2592, 2610, 2613, or 2620; Chapter 8 (commencing with Section 2640) of Part 4; Chapter 9.5 (commencing with Section 2670) of Part 4; Section 3080 or 3088; or Chapter 3 (commencing with Section 3100) of Part 6.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1461.7. Time and place of hearing on petition, report, or account; copies

Unless the court for good cause dispenses with such notice, notice of the time and place of the hearing on a petition, report, or account, together with a copy of the petition, report, or account, shall be given to the same persons who are required to be given notice under Section 2581 for the period and in the manner provided in this chapter if both of the following conditions exist:

(a) A conservator of the estate has been appointed under Article 5 (commencing with Section 1845) of Chapter 1 of Part 3 for a person who is missing and whose whereabouts is unknown.

(b) The petition, report, or account is filed in the conservatorship proceeding under any one or more of the following provisions:

(1) Section 1861 or 2423.

(2) Article 7 (commencing with Section 2540) of Chapter 6 of Part 4.

(3) Section 2570, 2571, 2580, 2592, or 2620.

(4) Chapter 8 (commencing with Section 2640) of Part 4.

(5) Chapter 9.5 (commencing with Section 2670) of Part 4.

(6) Chapter 3 (commencing with Section 3100) of Part 6.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1467. Service by mail deemed complete

If service is made by mail pursuant to this division in the manner authorized in Section 415.30 of the Code of Civil Procedure, the service is complete on the date a written acknowledgment of receipt is executed.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1469. References to § 1220 deemed references to this chapter

Where a provision of this division applies the provisions of this code applicable to personal representatives to proceedings under this division, a reference to Section 1220 in the provisions applicable to personal representatives shall be deemed to be a reference to this chapter.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

Part 2 GUARDIANSHIP

Chapter 1 ESTABLISHMENT OF GUARDIANSHIP

Article 2 APPOINTMENT OF GUARDIAN GENERALLY

§ 1510. Petition for appointment; contents

(a) A relative or other person on behalf of the minor, or the minor if 12 years of age or older, may file a petition for the appointment of a guardian of the minor.

(b) The petition shall request that a guardian of the person or estate of the minor, or both, be appointed, shall specify the name and address of the proposed guardian and the name and date of birth of the proposed ward, and shall state that the appointment is necessary or convenient.

(c) The petition shall set forth, so far as is known to the petitioner, the names and addresses of all of the following:

(1) The parents of the proposed ward.

(2) The person having legal custody of the proposed ward and, if that person does not have the care of the proposed ward, the person having the care of the proposed ward.

(3) The relatives of the proposed ward within the second degree.

(4) In the case of a guardianship of the estate, the spouse of the proposed ward.

(5) Any person nominated as guardian for the proposed ward under Section 1500 or 1501.

(d) If the proposed ward is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed ward.

(f) If the petitioner has knowledge of any pending adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward, the petition shall disclose the pending proceeding.

(g) If the petitioners have accepted or intend to accept physical care or custody of the child with intent to adopt, whether formed at the time of placement or formed subsequent to placement, the petitioners shall so state in the guardianship petition, whether or not an adoption petition has been filed.

(h) If the proposed ward is or becomes the subject of an adoption petition, the court shall order the guardianship petition consolidated with the adoption petition.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1992, c. 1064 (S.B.1445), § 1.)

§ 1511. Notice of hearing

(a) Except as provided in subdivisions (f) and (g), at least 15 days before the hearing on the petition for the appointment of a guardian, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), (d), and (e) of this section. The notice shall be accompanied by a copy of the petition. The court may not shorten the time for giving the notice of hearing under this section.

(b) Notice shall be served in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure, or in any manner authorized by the court, on all of the following persons:

(1) The proposed ward if 12 years of age or older.

(2) Any person having legal custody of the proposed ward, or serving as guardian of the estate of the proposed ward.

(3) The parents of the proposed ward.

(4) Any person nominated as a guardian for the proposed ward under Section 1500 or 1501.

(c) Notice shall be given by mail sent to their addresses stated in the petition, or in any manner authorized by the court, to all of the following:

(1) The spouse named in the petition.

(2) The relatives named in the petition, except that if the petition is for the appointment of a guardian of the estate only the court may dispense with the giving of notice to any one or more or all of the relatives.

(3) The person having the care of the proposed ward if other than the person having legal custody of the proposed ward.

(d) If notice is required by Section 1461 or Section 1542 to be given to the Director of Mental Health or the Director of Developmental Services or the Director of Social Services, notice shall be mailed as so required.

(e) If the petition states that the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 1461.5.

(f) Unless the court orders otherwise, notice shall not be given to any of the following:

(1) The parents or other relatives of a proposed ward who has been relinquished to a licensed adoption agency.

(2) The parents of a proposed ward who has been judicially declared free from their custody and control.

(g) Notice need not be given to any person if the court so orders upon a determination of either of the following:

(1) The person cannot with reasonable diligence be given the notice.

(2) The giving of the notice would be contrary to the interest of justice.

(h) Before the appointment of a guardian is made, proof shall be made to the court that each person entitled to notice under this section either:

(1) Has been given notice as required by this section.

(2) Has not been given notice as required by this section because the person cannot with reasonable diligence be given the notice or because the giving of notice to that person would be contrary to the interest of justice.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1992, c. 1064 (S.B.1445), § 2; Stats.1996, c. 563 (S.B.392), § 6.)

§ 1512. Amendment of petition to disclose newly discovered proceeding affecting custody

Within 10 days after the petitioner in the guardianship proceeding becomes aware of any proceeding not disclosed in the guardianship petition affecting the custody of the proposed ward (including any adoption, juvenile court, marriage dissolution, domestic relations, or other similar proceeding affecting the proposed ward), the petitioner shall amend the guardianship petition to disclose the other proceeding.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1513. Investigation; filing of report and recommendation concerning proposed guardianship; contents of report; confidentiality; application of section

(a) Unless waived by the court, a court investigator, probation officer, or domestic relations investigator may make an investigation and file with the court a report and recommendation concerning each proposed guardianship of the person or guardianship of the estate. Investigations where the proposed guardian is a relative shall be made by a court investigator. Investigations where the proposed guardian is a nonrelative shall be made by the county agency designated to investigate potential dependency. The report for the guardianship of the person shall include, but need not be limited to, an investigation and discussion of all of the following:

(1) A social history of the guardian.

(2) A social history of the proposed ward, including, to the extent feasible, an assessment of any identified developmental, emotional, psychological, or educational needs of the proposed ward and the capability of the petitioner to meet those needs.

(3) The relationship of the proposed ward to the guardian, including the duration and character of the relationship, where applicable, the circumstances whereby physical custody of the proposed ward was acquired by the guardian, and a statement of the proposed ward's attitude concerning the proposed guardianship, unless the statement of the attitude is affected by the proposed ward's developmental, physical, or emotional condition.

(4) The anticipated duration of the guardianship and the plans of both natural parents and the proposed guardian for the stable and permanent home for the child. The court may waive this requirement for cases involving relative guardians.

(b) The report shall be read and considered by the court prior to ruling on the petition for guardianship, and shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding.

(c) If the investigation finds that any party to the proposed guardianship alleges the minor's parent is unfit, as defined by Section 300 of the Welfare and Institutions Code, the case shall be referred to the county agency designated to investigate potential dependencies. Guardianship proceedings shall not be completed until the investigation required by Sections 328 and 329 of the Welfare and Institutions Code is completed and a report is provided to the court in which the guardianship proceeding is pending.

(d) The report authorized by this section is confidential and shall only be made available to persons who have been served in the proceedings or their attorneys. The clerk of the court shall make provisions for the limitation of the report exclusively to persons entitled to its receipt.

(e) For the purpose of writing the report authorized by this section, the person making the investigation and report shall have access to the proposed ward's school records, probation records, and public and private social services records, and to an oral or written summary of the proposed ward's medical records and psychological records prepared by any physician, psychologist, or psychiatrist who made or who is maintaining those records. The physician, psychologist, or psychiatrist shall be available to clarify information regarding these records pursuant to the investigator's responsibility to gather and provide information for the court.

(f) This section does not apply to guardianships resulting from a permanency plan for a dependent child pursuant to Section 366.25 of the Welfare and Institutions Code.

(g) For purposes of this section, a "relative" means a person who is a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half–brother, half–sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great," or the spouse of any of these persons, even after the marriage has been terminated by death or dissolution.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1992, c. 572 (S.B.1455), § 3; Stats.1993, c. 59 (S.B.443), § 16, eff. June 30, 1993; Stats.1996, c. 563 (S.B.392), § 7; Stats.2002, c. 784 (S.B.1316), § 576.)

§ 1513.1. Assessments

(a) Each court or county shall assess (1) the parent, parents, or other person charged with the support and maintenance of the ward or proposed ward, and (2) the guardian, proposed guardian, or the estate of the ward or proposed ward, for court or county expenses incurred for any investigation or review conducted by the court investigator, probation officer, or domestic relations investigator. The court may order reimbursement to the court or to the county in the amount of the assessment, unless the court finds that all or any part of the assessment would impose a hardship on the ward or the ward's estate. A county may waive any or all of an assessment against the guardianship on the basis of hardship. There shall be a rebuttable presumption that the assessment would impose a hardship if the ward is receiving Medi–Cal benefits.

(b) Any amount chargeable as state–mandated local costs incurred by a county for the cost of the investigation or review shall be reduced by any assessments actually collected by the county pursuant to subdivision (a) during that fiscal year.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1991, c. 82 (S.B.896), § 4, eff. June 30, 1991, operative July 1, 1991; Stats.1996, c. 563 (S.B.392), § 8; Stats.2002, c. 1008 (A.B.3028), § 27; Stats.2003, c. 62 (S.B.600), § 242.)

§ 1513.2. Status report; form; contents; confidentiality

(a) To the extent resources are available, the court shall implement procedures, as described in this section, to ensure that every guardian annually completes and returns to the court a status report, including the statement described in subdivision (b). A guardian who willfully submits any material information required by the form which he or she knows to be false shall be guilty of a misdemeanor. Not later than one month prior to the date the status report is required to be returned, the clerk of the court shall mail to the guardian by first–class mail a notice informing the guardian that he or she is required to complete and return the status report to the court. The clerk shall enclose with the letter a blank status report form for the guardian to complete and return by mail. If the status report is not completed and returned as required, or if the court finds, after a status report has been completed and returned, that further information is needed, the court shall attempt to obtain the information required in the report from the guardian or other sources. If the court is unable to obtain this information within 30 days after the date the status report is due, the court shall either order the guardian to make himself or herself available to the investigator for purposes of investigation of the guardianship, or to show cause why the guardian should not be removed.

(b) The Judicial Council shall develop a form for the status report. The form shall include the following statement: "A guardian who willfully submits any material information required by this form

which he or she knows to be false is guilty of a misdemeanor." The form shall request information the Judicial Council deems necessary to determine the status of the guardianship, including, but not limited to, the following:

(1) The guardian's present address.

(2) The name and birth date of the child under guardianship.

(3) The name of the school in which the child is enrolled, if any.

(4) If the child is not in the guardian's home, the name, relationship, address, and telephone number of the person or persons with whom the child resides.

(5) If the child is not in the guardian's home, why the child was moved.

(c) The report authorized by this section is confidential and shall only be made available to persons who have been served in the proceedings or their attorneys. The clerk of the court shall implement procedures for the limitation of the report exclusively to persons entitled to its receipt.

(d) The Judicial Council shall report to the Legislature no later than December 31, 2004, regarding the costs and benefits of utilizing the annual status report.

(Added by Stats.2002, c. 1115 (A.B.3036), § 2.)

§ 1514. Appointment of guardian

(a) Upon hearing of the petition, if it appears necessary or convenient, the court may appoint a guardian of the person or estate of the proposed ward or both.

(b) In appointing a guardian of the person, the court is governed by Chapter 1 (commencing with Section 3020) and Chapter 2 (commencing with Section 3040) of Part 2 of Division 8 of the Family Code, relating to custody of a minor.

(c) The court shall appoint a guardian nominated under Section 1500 insofar as the nomination relates to the guardianship of the estate unless the court determines that the nominee is unsuitable.

(d) The court shall appoint the person nominated under Section 1501 as guardian of the property covered by the nomination unless the court determines that the nominee is unsuitable. If the person so appointed is appointed only as guardian of the property covered by the nomination, the letters of guardianship shall so indicate.

(e) Subject to subdivisions (c) and (d), in appointing a guardian of the estate:

(1) The court is to be guided by what appears to be in the best interest of the proposed ward, taking into account the proposed guardian's ability to manage and to preserve the estate as well as the proposed guardian's concern for and interest in the welfare of the proposed ward.

(2) If the proposed ward is of sufficient age to form an intelligent preference as to the person to be appointed as guardian, the court shall give consideration to that preference in determining the person to be so appointed.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1992, c. 163 (A.B.2641), § 123, operative Jan. 1, 1994.)

§ 1514.5. Information available for probate guardianship proceeding and guardianship investigator regarding best interest of child; confidentiality

Notwithstanding any other provision of law, except provisions of law governing the retention and storage of data, a family law court shall, upon request from the court in any county hearing a probate guardianship matter proceeding before the court pursuant to this part, provide to the court all available information the court deems necessary to make a determination regarding the best interest of a child, as described in Section 3011 of the Family Code, who is the subject of the proceeding. The information shall also be released to a guardianship investigator, as provided in subdivision (a) of Section 1513, acting within the scope of his or her duties in that proceeding. Any information released pursuant to this section that is confidential pursuant to any other provision of law shall remain confidential and may not be released, except to the extent necessary to comply with this section. No records shared pursuant to this section may be disclosed to any party in a case unless the party requests the agency or court that originates the record to release these records and the request is granted. In counties that provide confidential family law mediation, or confidential dependency mediation, those mediations are not covered by this section.

(Added by Stats.2004, c. 574 (A.B.2228), § 2.)

§ 1515. No guardian of person for married minor

Notwithstanding any other provision of this part, no guardian of the person may be appointed for a minor who is married or whose marriage has been dissolved. This section does not apply in the case of a minor whose marriage has been adjudged a nullity.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1516. Petitions for guardianship of the person; mailing of notice of hearing and copy of petition; screening of guardians; application of section

(a) In each case involving a petition for guardianship of the person, the petitioner shall mail a notice of the hearing and a copy of the petition, at least 15 days prior to the hearing, to the local agency designated by the board of supervisors to investigate guardianships for the court. The local social services agency providing child protection services shall screen the name of the guardian for prior referrals of neglect or abuse of minors. The results of this screening shall be provided to the court.

(b) This section does not apply to guardianships resulting from a permanency plan for a dependent child pursuant to Section 366.25 of the Welfare and Institutions Code.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1516.5. Proceeding to have child declared free from custody and control of one or both parents

(a) A proceeding to have a child declared free from the custody and control of one or both parents may be brought in the guardianship proceeding pursuant to Part 4 (commencing with Section 7800) of Division 12 of the Family Code, if all of the following requirements are satisfied:

(1) One or both parents do not have the legal custody of the child.

(2) The child has been in the physical custody of the guardian for a period of not less than two years.

(3) The court finds that the child would benefit from being adopted by his or her guardian. In making this determination, the court shall consider all factors relating to the best interest of the child, including but not limited to, the nature and extent of the relationship between all of the following:

(A) The child and the birth parent.

(B) The child and the guardian, including family members of the guardian.

(C) The child and any siblings or half–siblings.

(b) The court shall appoint a court investigator or other qualified professional to investigate all factors enumerated in subdivision (a). The findings of the investigator or professional regarding those issues shall be included in the written report required pursuant to Section 7851 of the Family Code.

(c) The rights of the parent, including the rights to notice and counsel provided in Part 4 (commencing with Section 7800) of Division 12 of the Family Code, shall apply to actions brought pursuant to this section.

(d) This section does not apply to any child who is a dependent of the juvenile court.

(Added by Stats.2003, c. 251 (S.B.182), § 11.)

§ 1517. Guardianships resulting from selection and implementation of a permanent plan; application of part

This part does not apply to guardianships resulting from the selection and implementation of a permanent plan pursuant to Section

366.25 or 366.26 of the Welfare and Institutions Code. For those minors, the applicable sections of the Welfare and Institutions Code and Division Ia[1] (commencing with Rule 1400) of Title Four of the California Rules of Court specify the exclusive procedures for establishing, modifying, and terminating legal guardianships. If no specific provision of the Welfare and Institutions Code or the California Rules of Court is applicable, the provisions applicable to the administration of estates under Part 4 (commencing with Section 2100) govern so far as they are applicable to like situations.
(Added by Stats.1991, c. 82 (S.B.896), § 6, eff. June 30, 1991, operative July 1, 1991.)
[1]Now designated Division Ic.

Part 3 CONSERVATORSHIP

Chapter 1 ESTABLISHMENT OF CONSERVATORSHIP

Article 1 PERSONS FOR WHOM CONSERVATOR MAY BE APPOINTED

§ 1800. Purpose of chapter

It is the intent of the Legislature in enacting this chapter to do the following:

(a) Protect the rights of persons who are placed under conservatorship.

(b) Provide that an assessment of the needs of the person is performed in order to determine the appropriateness and extent of a conservatorship and to set goals for increasing the conservatee's functional abilities to whatever extent possible.

(c) Provide that the health and psychosocial needs of the proposed conservatee are met.

(d) Provide that community–based services are used to the greatest extent in order to allow the conservatee to remain as independent and in the least restrictive setting as possible.

(e) Provide that the periodic review of the conservatorship by the court investigator shall consider the best interests of the conservatee.

(f) Ensure that the conservatee's basic needs for physical health, food, clothing, and shelter are met.

(g) Provide for the proper management and protection of the conservatee's real and personal property.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1800.3. Conservatorship for adults, married minors, or nonresidents

(a) If the need therefor is established to the satisfaction of the court and the other requirements of this chapter are satisfied, the court may appoint:

(1) A conservator of the person or estate of an adult, or both.

(2) A conservator of the person of a minor who is married or whose marriage has been dissolved.

(b) Notwithstanding subdivision (a), a conservatorship of the person may not be established for a nonresident of this state if a conservatorship has been established, or a protective court order has been issued, in another state with respect to that person, or a proceeding to establish a conservatorship or obtain a protective court order is pending in another state with respect to that person, unless both of the following are met:

(1) The person who is or would be protected by the conservatorship or protective order is in this state.

(2) The out–of–state court in which the conservatorship has been established or the protective order has been issued, or in which there is a proceeding to establish a conservatorship or other protective order, has authorized the permanent removal of the person described in paragraph (1) to this state.

(c) Subdivision (b) shall be operative only until January 1, 2001.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1997, c. 663 (S.B.628), § 1.)

§ 1801. Conservator of person or estate or person and estate; limited conservator; appointment; standard of proof

Subject to Section 1800.3:

(a) A conservator of the person may be appointed for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter, except as provided for the person as described in subdivision (b) or (c) of Section 1828.5.

(b) A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence, except as provided for that person as described in subdivision (b) or (c) of Section 1828.5. Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.

(c) A conservator of the person and estate may be appointed for a person described in subdivisions (a) and (b).

(d) A limited conservator of the person or of the estate, or both, may be appointed for a developmentally disabled adult. A limited conservatorship may be utilized only as necessary to promote and protect the well–being of the individual, shall be designed to encourage the development of maximum self–reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations. The conservatee of the limited conservator shall not be presumed to be incompetent and shall retain all legal and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator. The intent of the Legislature, as expressed in Section 4501 of the Welfare and Institutions Code, that developmentally disabled citizens of this state receive services resulting in more independent, productive, and normal lives is the underlying mandate of this division in its application to adults alleged to be developmentally disabled.

(e) The standard of proof for the appointment of a conservator pursuant to this section shall be clear and convincing evidence.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1995, c. 842 (S.B.730), § 7.)

§ 1802. Appointment upon request of proposed conservatee; good cause

Subject to Section 1800.3, a conservator of the person or estate, or both, may be appointed for a person who voluntarily requests the appointment and who, to the satisfaction of the court, establishes good cause for the appointment.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1803. Conservator of estate of absentee; appointment

A conservator of the estate may be appointed for a person who is an absentee as defined in Section 1403.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1804. Missing persons; appointment of conservator of estate

Subject to Section 1800.3, a conservator of the estate may be appointed for a person who is missing and whose whereabouts is unknown.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

Article 3 ESTABLISHMENT OF CONSERVATORSHIP

§ 1820. Petition; filing; persons authorized

(a) A petition for the appointment of a conservator may be filed by any of the following:

(1) The proposed conservatee.

(2) The spouse or domestic partner of the proposed conservatee.

(3) A relative of the proposed conservatee.

(4) Any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state.

(5) Any other interested person or friend of the proposed conservatee.

(b) If the proposed conservatee is a minor, the petition may be filed during his or her minority so that the appointment of a conservator may be made effective immediately upon the minor's attaining the age of majority. An existing guardian of the minor may be appointed as conservator under this part upon the minor's attaining the age of majority, whether or not the guardian's accounts have been settled.

(c) A creditor of the proposed conservatee may not file a petition for appointment of a conservator unless the creditor is a person described in paragraph (2), (3), or (4) of subdivision (a).

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2001, c. 893 (A.B.25), § 17.)

§ 1821. Contents of petition; supplemental information; form

(a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name, address, and telephone number of the proposed conservator and the name, address, and telephone number of the proposed conservatee, and state the reasons why a conservatorship is necessary. Unless the petitioner is a bank or other entity authorized to conduct the business of a trust company, the petitioner shall also file supplemental information as to why the appointment of a conservator is required. The supplemental information to be submitted shall include a brief statement of facts addressed to each of the following categories:

(1) The inability of the proposed conservatee to properly provide for his or her needs for physical health, food, clothing, and shelter.

(2) The location of the proposed conservatee's residence and the ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered by the petitioner and reasons why those alternatives are not available.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner has information as to those services.

(5) The inability of the proposed conservatee to substantially manage his or her own financial resources, or to resist fraud or undue influence.

The facts required to address the categories set forth in paragraphs (1) to (5), inclusive, shall be set forth by the petitioner when he or she has knowledge of the facts or by the declarations or affidavits of other persons having knowledge of those facts.

Where any of the categories set forth in paragraphs (1) to (5), inclusive, are not applicable to the proposed conservatorship, the petitioner shall so indicate and state on the supplemental information form the reasons therefor.

The Judicial Council shall develop a supplemental information form for the information required pursuant to paragraphs (1) to (5), inclusive, after consultation with individuals or organizations approved by the Judicial Council, who represent public conservators, court investigators, the State Bar, specialists with experience in performing assessments and coordinating community–based services, and legal services for the elderly and disabled.

The supplemental information form shall be separate and distinct from the form for the petition. The supplemental information shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested this supplemental information or who have appeared in the proceedings, their attorneys, and the court. The court shall have discretion at any other time to release the supplemental information to other persons if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the supplemental information exclusively to persons entitled thereto under this section.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse or domestic partner, and of the relatives of the proposed conservatee within the second degree. If no spouse or domestic partner of the proposed conservatee or relatives of the proposed conservatee within the second degree are known to the petitioner, the petition shall set forth, so far as they are known to the petitioner, the names and addresses of the following persons who, for the purposes of Section 1822, shall all be deemed to be relatives:

(1) A spouse or domestic partner of a predeceased parent of a proposed conservatee.

(2) The children of a predeceased spouse or domestic partner of a proposed conservatee.

(3) The siblings of the proposed conservatee's parents, if any, but if none, then the natural and adoptive children of the proposed conservatee's parents' siblings.

(4) The natural and adoptive children of the proposed conservatee's siblings.

(c) If the petition is filed by a person other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor, or the agent of a creditor or debtor, of the proposed conservatee.

(d) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed conservatee.

(f) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(g) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(h) In the case of an allegedly developmentally disabled adult, the petition shall set forth the following:

(1) The nature and degree of the alleged disability, the specific duties and powers requested by or for the limited conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment.

(2) Whether or not the proposed limited conservatee is or is alleged to be developmentally disabled.

Reports submitted pursuant to Section 416.8 of the Health and Safety Code meet the requirements of this section, and conservatorships filed pursuant to Article 7.5 (commencing with Section 416) of Part 1 of Division 1 of the Health and Safety Code are exempt from providing the supplemental information required by this section, so long as the guidelines adopted by the State Department of Developmental Services for regional centers require the same information that is required pursuant to this section.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats. 1991, c. 82 (S.B.896), § 8, eff. June 30, 1991, operative July 1, 1991; Stats.2001, c. 893 (A.B.25), § 18; Stats.2002, c. 784 (S.B.1316), § 577.)

§ 1822. Notice of hearing; mailing

(a) At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of the hearing shall be given as provided in this section. The notice shall be accompanied by a copy of the petition. The court may not shorten the time for giving the notice of hearing under this section.

(b) Notice shall be mailed to the following persons:

(1) The spouse, if any, or domestic partner, if any, of the proposed conservatee at the address stated in the petition.

(2) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If the petition states that the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 1461.5.

(e) If the proposed conservatee is a person with developmental disabilities, at least 30 days before the day of the hearing on the petition, the petitioner shall mail a notice of the hearing and a copy of the petition to the regional center identified in Section 1827.5.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1991, c. 82 (S.B.896), § 10, eff. June 30, 1991, operative July 1, 1991; Stats.2001, c. 893 (A.B.25), § 19.)

§ 1823. Citation to proposed conservatee; contents

(a) If the petition is filed by a person other than the proposed conservatee, the clerk shall issue a citation directed to the proposed conservatee setting forth the time and place of hearing.

(b) The citation shall include a statement of the legal standards by which the need for a conservatorship is adjudged as stated in Section 1801 and shall state the substance of all of the following:

(1) The proposed conservatee may be adjudged unable to provide for personal needs or to manage financial resources and, by reason thereof, a conservator may be appointed for the person or estate or both.

(2) Such adjudication may affect or transfer to the conservator the proposed conservatee's right to contract, in whole or in part, to manage and control property, to give informed consent for medical treatment, and to fix a residence.

(3) The proposed conservatee may be disqualified from voting if not capable of completing an affidavit of voter registration.

(4) The court or a court investigator will explain the nature, purpose, and effect of the proceeding to the proposed conservatee and will answer questions concerning the explanation.

(5) The proposed conservatee has the right to appear at the hearing and to oppose the petition, and in the case of an alleged developmentally disabled adult, to oppose the petition in part, by objecting to any or all of the requested duties or powers of the limited conservator.

(6) The proposed conservatee has the right to choose and be represented by legal counsel and has the right to have legal counsel appointed by the court if unable to retain legal counsel.

(7) The proposed conservatee has the right to a jury trial if desired.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1824. Service of citation and petition upon proposed conservatee

The citation and a copy of the petition shall be served on the proposed conservatee at least 15 days before the hearing. Service shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court. If the proposed conservatee is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1825. Attendance of proposed conservatee at hearing; exceptions; inability to attend; affidavit

(a) The proposed conservatee shall be produced at the hearing except in the following cases:

(1) Where the proposed conservatee is out of the state when served and is not the petitioner.

(2) Where the proposed conservatee is unable to attend the hearing by reason of medical inability.

(3) Where the court investigator has reported to the court that the proposed conservatee has expressly communicated that the proposed conservatee (i) is not willing to attend the hearing, (ii) does not wish to contest the establishment of the conservatorship, and (iii) does not object to the proposed conservator or prefer that another person act as conservator, and the court makes an order that the proposed conservatee need not attend the hearing.

(b) If the proposed conservatee is unable to attend the hearing because of medical inability, such inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the proposed conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the proposed conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the establishment of a conservatorship.

(c) Emotional or psychological instability is not good cause for the absence of the proposed conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed conservatee.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1826. Court investigator; duties; report; distribution; confidentiality

Regardless of whether the proposed conservatee attends the hearing, the court investigator shall do all of the following:

(a) Interview the proposed conservatee personally.

(b) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.

(d) Review the allegations of the petition as to why the appointment of the conservator is required and, in making his or her determination, do the following:

(1) Refer to the supplemental information form submitted by the petitioner and consider the facts set forth in the form that address each of the categories specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1821.

(2) Consider, to the extent practicable, whether he or she believes the proposed conservatee suffers from any of the mental function deficits listed in subdivision (a) of Section 811 that significantly impairs the proposed conservatee's ability to understand and appreciate the consequences of his or her actions in connection with any of the functions described in subdivision (a) or (b) of Section 1801 and identify the observations that support that belief.

(e) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.

(f) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(g) Determine whether the proposed conservatee wishes to be represented by legal counsel and, if so, whether the proposed conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain.

(h) Determine whether the proposed conservatee is capable of completing an affidavit of voter registration.

(i) If the proposed conservatee has not retained legal counsel, determine whether the proposed conservatee desires the court to appoint legal counsel.

(j) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the proposed conservatee in any case where the proposed conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

(k) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the proposed conservatee's express communications concerning both of the following:

(1) Representation by legal counsel.

(2) Whether the proposed conservatee is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(*l*) Mail, at least five days before the hearing, a copy of the report referred to in subdivision (k) to all of the following:

(1) The attorney, if any, for the petitioner.

(2) The attorney, if any, for the proposed conservatee.

(3) Any other persons as the court orders.

(m) The court investigator has discretion to release the report required by this section to the public conservator, interested public agencies, and the long–term care ombudsman.

(n) The report required by this section is confidential and shall be made available only to parties, persons given notice of the petition who have requested this report or who have appeared in the proceedings, their attorneys, and the court. The court has discretion at any other time to release the report, if it would serve the interests of the conservatee. The clerk of the court shall provide for the limitation of the report exclusively to persons entitled to its receipt.

(*o*) This section does not apply to a proposed conservatee who has personally executed the petition for conservatorship, or one who has nominated his or her own conservator, if he or she attends the hearing.

(p) If the court investigator has performed an investigation within the preceding six months and furnished a report thereon to the court, the court may order, upon good cause shown, that another investigation is not necessary or that a more limited investigation may be performed.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1998, c. 581 (A.B.2801), § 21; Stats.2002, c. 784 (S.B.1316), § 578.)

§ 1827. Law and procedure applicable to hearing

The court shall hear and determine the matter of the establishment of the conservatorship according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded by the proposed conservatee.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2000, c. 17 (A.B.1491), § 4.2.)

§ 1827.5. Assessment of proposed limited or general conservatee

(a) In the case of any proceeding to establish a limited conservatorship for a person with developmental disabilities, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, shall be assessed at a regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. The regional center shall submit a written report of its findings and recommendations to the court.

(b) In the case of any proceeding to establish a general conservatorship for a person with developmental disabilities, the regional center, with the consent of the proposed conservatee, may prepare an assessment as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. If an assessment is prepared, the regional center shall submit its findings and recommendations to the court.

(c) A report prepared under subdivision (a) or (b) shall include a description of the specific areas, nature, and degree of disability of the proposed conservatee or proposed limited conservatee. The findings and recommendations of the regional center are not binding upon the court.

In a proceeding where the petitioner is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or a spouse or employee of a provider, is not the natural parent of the proposed conservatee or proposed limited conservatee, and is not a public entity, the regional center shall include a recommendation in its report concerning the suitability of the petitioners to meet the needs of the proposed conservatee or proposed limited conservatee.

(d) At least five days before the hearing on the petition, the regional center shall mail a copy of the report referred to in subdivision (a) to all of the following:

(1) The proposed limited conservatee.

(2) The attorney, if any, for the proposed limited conservatee.

(3) If the petitioner is not the proposed limited conservatee, the attorney for the petitioner or the petitioner if the petitioner does not have an attorney.

(4) Such other persons as the court orders.

(e) The report referred to in subdivisions (a) and (b) shall be confidential and shall be made available only to parties listed in subdivision (d) unless the court, in its discretion, determines that the release of the report would serve the interests of the conservatee who is developmentally disabled. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1991, c. 82 (S.B.896), § 12, eff. June 30, 1991, operative July 1, 1991; Stats.2002, c. 784 (S.B.1316), § 579.)

§ 1828. Information to proposed conservatee by court

(a) Except as provided in subdivision (c), prior to the establishment of a conservatorship of the person or estate, or both, the court shall inform the proposed conservatee of all of the following:

(1) The nature and purpose of the proceeding.

(2) The establishment of a conservatorship is a legal adjudication of the conservatee's inability properly to provide for the conservatee's personal needs or to manage the conservatee's own financial resources, or both, depending on the allegations made and the determinations requested in the petition, and the effect of such an adjudication on the conservatee's basic rights.

(3) The proposed conservatee may be disqualified from voting if not capable of completing an affidavit of voter registration.

(4) The identity of the proposed conservator.

(5) The nature and effect on the conservatee's basic rights of any order requested under Chapter 4 (commencing with Section 1870), and in the case of an allegedly developmentally disabled adult, the specific effects of each limitation requested in such order.

(6) The proposed conservatee has the right to oppose the proceeding, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(b) After the court so informs the proposed conservatee and prior to the establishment of the conservatorship, the court shall consult the proposed conservatee to determine the proposed conservatee's opinion concerning all of the following:

(1) The establishment of the conservatorship.

(2) The appointment of the proposed conservator.

(3) Any order requested under Chapter 4 (commencing with Section 1870), and in the case of an allegedly developmentally disabled adult, of each limitation requested in such order.

(c) This section does not apply where both of the following conditions are satisfied:

(1) The proposed conservatee is absent from the hearing and is not required to attend the hearing under the provisions of subdivision (a) of Section 1825.

(2) Any showing required by Section 1825 has been made.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1828.5. Limited conservator for developmentally disabled adult; appointment; hearing

(a) At the hearing on the petition for appointment of a limited conservator for an allegedly developmentally disabled adult, the court shall do each of the following:

(1) Inquire into the nature and extent of the general intellectual functioning of the individual alleged to be developmentally disabled.

(2) Evaluate the extent of the impairment of his or her adaptive behavior.

(3) Ascertain his or her capacity to care for himself or herself and his or her property.

(4) Inquire into the qualifications, abilities, and capabilities of the person seeking appointment as limited conservator.

(5) If a report by the regional center, in accordance with Section 1827.5, has not been filed in court because the proposed limited conservatee withheld his or her consent to assessment by the regional center, the court shall determine the reason for withholding such consent.

(b) If the court finds that the proposed limited conservatee possesses the capacity to care for himself or herself and to manage his or her property as a reasonably prudent person, the court shall dismiss the petition for appointment of a limited conservator.

(c) If the court finds that the proposed limited conservatee lacks the capacity to perform some, but not all, of the tasks necessary to provide properly for his or her own personal needs for physical health, food, clothing, or shelter, or to manage his or her own financial resources, the court shall appoint a limited conservator for the person or the estate or the person and the estate.

(d) If the court finds that the proposed limited conservatee lacks the capacity to perform all of the tasks necessary to provide properly for his or her own personal needs for physical health, food, clothing, or shelter, or to manage his or her own financial resources, the court shall appoint either a conservator or a limited conservator for the person or the estate, or the person and the estate.

(e) The court shall define the powers and duties of the limited conservator so as to permit the developmentally disabled adult to care for himself or herself or to manage his or her financial resources commensurate with his or her ability to do so.

(f) Prior to the appointment of a limited conservator for the person or estate or person and estate of a developmentally disabled adult, the court shall inform the proposed limited conservatee of the nature and purpose of the limited conservatorship proceeding, that the appointment of a limited conservator for his or her person or estate or person and estate will result in the transfer of certain rights set forth in the petition and the effect of such transfer, the identity of the person who has been nominated as his or her limited conservator, that he or she has a right to oppose such proceeding, and that he or she has a right to have the matter tried by jury. After communicating such information to the person and prior to the appointment of a limited conservator, the court shall consult the person to determine his or her opinion concerning the appointment.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1829. Persons who may support or oppose petition

Any of the following persons may appear at the hearing to support or oppose the petition:

(a) The proposed conservatee.

(b) The spouse or domestic partner of the proposed conservatee.

(c) A relative of the proposed conservatee.

(d) Any interested person or friend of the proposed conservatee.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2001, c. 893 (A.B.25), § 20.)

§ 1830. Order appointing conservator or limited conservator for developmentally disabled adult; contents

(a) The order appointing the conservator shall contain, among other things, the names, addresses, and telephone numbers of:

(1) The conservator.

(2) The conservatee's attorney, if any.

(3) The court investigator, if any.

(b) In the case of a limited conservator for a developmentally disabled adult, any order the court may make shall include the findings of the court specified in Section 1828.5. The order shall specify the powers granted to and duties imposed upon the limited conservator, which powers and duties may not exceed the powers and duties applicable to a conservator under this code. The order shall also specify the following:

(1) The properties of the limited conservatee to which the limited conservator is entitled to possession and management, giving a description of the properties that will be sufficient to identify them.

(2) The debts, rentals, wages, or other claims due to the limited conservatee which the limited conservator is entitled to collect, or file suit with respect to, if necessary, and thereafter to possess and manage.

(3) The contractual or other obligations which the limited conservator may incur on behalf of the limited conservatee.

(4) The claims against the limited conservatee which the limited conservator may pay, compromise, or defend, if necessary.

(5) Any other powers, limitations, or duties with respect to the care of the limited conservatee or the management of the property specified in this subdivision by the limited conservator which the court shall specifically and expressly grant.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1834. Acknowledgment of receipt by conservator; statement of duties and liabilities; conservatorship information

(a) Before letters are issued, the conservator (other than a trust company or a public conservator) shall file an acknowledgment of receipt of (1) a statement of duties and liabilities of the office of conservator, and (2) a copy of the conservatorship information required under Section 1835. The acknowledgment and the statement shall be in the form prescribed by the Judicial Council.

(b) The court may by local rules require the acknowledgment of receipt to include the conservator's birth date and driver's license number, if any, provided that the court ensures their confidentiality.

(c) The statement of duties and liabilities prescribed by the Judicial Council shall not supersede the law on which the statement is based.

(Added by Stats.1991, c. 1019 (S.B.1022), § 1. Amended by Stats.1994, c. 806 (A.B.3686), § 9.)

§ 1835. Conservator's rights, duties, limitations and responsibilities; dissemination of information by Superior Court; failure to provide information

(a) Every * * * superior court shall provide all private conservators with written information concerning a conservator's rights, duties, limitations, and responsibilities under this division.

(b) The information to be provided shall include, but need not be limited to, the following:

(1) The rights, duties, limitations, and responsibilities of a conservator.

(2) The rights of a conservatee.

(3) How to assess the needs of the conservatee.

(4) How to use community–based services to meet the needs of the conservatee.

(5) How to ensure that the conservatee is provided with the least restrictive possible environment.

(6) The court procedures and processes relevant to conservatorships.

(7) The procedures for inventory and appraisal, and the filing of accounts.

(c) An information package shall be developed by the Judicial Council, after consultation with the following organizations or individuals:

(1) The California State Association of Public Administrators, Public Guardians, and Public Conservators, or other comparable organizations.

(2) The State Bar.

(3) Individuals or organizations, approved by the Judicial Council, who represent court investigators, specialists with experience in performing assessments and coordinating community–based services, and legal services programs for the elderly.

(d) The failure of any court * * * or any employee or agent thereof, to provide information to a conservator as required by this section does not:

(1) Relieve the conservator of any of the conservator's duties as required by this division.

(2) Make the court * * * or the employee or agent thereof, liable, in either a personal or official capacity, for damages to a conservatee, conservator, the conservatorship of a person or an estate, or any other person or entity.

(e) The information package shall be made available to individual courts. The Judicial Council shall periodically update the information package when changes in the law warrant revision. The revisions shall be provided to individual courts.

(f) To cover the costs of providing the written information required by this section, a court may charge each private conservator a fee * * * of twenty dollars ($20) which shall be distributed to the court in which it was collected.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1991, c. 1019 (S.B.1022), § 2; Stats.2005, c. 75 (A.B.145), § 147, eff. July 19, 2005, operative Jan. 1, 2006.)

Chapter 4 LEGAL CAPACITY OF CONSERVATEE

Article 2 CAPACITY TO GIVE INFORMED CONSENT FOR MEDICAL TREATMENT

§ 1880. Determination by court; order

If the court determines that there is no form of medical treatment for which the conservatee has the capacity to give an informed consent, the court shall (1) adjudge that the conservatee lacks the capacity to give informed consent for medical treatment and (2) by order give the conservator of the person the powers specified in Section 2355. If an order is made under this section, the letters shall include a statement that the conservator has the powers specified in Section 2355.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1881. Inability of conservatee to give informed medical consent; judicial determination; factors

(a) A conservatee shall be deemed unable to give informed consent to any form of medical treatment pursuant to Section 1880 if, for all medical treatments, the conservatee is unable to respond knowingly and intelligently to queries about medical treatment or is unable to participate in a treatment decision by means of a rational thought process.

(b) In order for a court to determine that a conservatee is unable to respond knowingly and intelligently to queries about his or her medical treatment or is unable to participate in treatment decisions by means of a rational thought process, a court shall do both of the following:

(1) Determine that, for all medical treatments, the conservatee is unable to understand at least one of the following items of minimum basic medical treatment information:

(A) The nature and seriousness of any illness, disorder, or defect that the conservatee has or may develop.

(B) The nature of any medical treatment that is being or may be recommended by the conservatee's health care providers.

(C) The probable degree and duration of any benefits and risks of any medical intervention that is being or may be recommended by the conservatee's health care providers, and the consequences of lack of treatment.

(D) The nature, risks, and benefits of any reasonable alternatives.

(2) Determine that one or more of the mental functions of the conservatee described in subdivision (a) of Section 811 is impaired and that there is a link between the deficit or deficits and the conservatee's inability to give informed consent.

(c) A deficit in the mental functions listed in subdivision (a) of Section 811 may be considered only if the deficit by itself, or in combination with one or more other mental function deficits, significantly impairs the conservatee's ability to understand the consequences of his or her decisions regarding medical care.

(d) In determining whether a conservatee's mental functioning is so severely impaired that the conservatee lacks the capacity to give informed consent to any form of medical treatment, the court may take into consideration the frequency, severity, and duration of periods of impairment.

(e) In the interest of minimizing unnecessary expense to the parties to a proceeding, paragraph (2) of subdivision (b) shall not apply to a petition pursuant to Section 1880 wherein the conservatee, after notice by the court of his or her right to object which, at least, shall include an interview by a court investigator pursuant to Section 1826 prior to the hearing on the petition, does not object to the proposed finding of incapacity, or waives any objections.

(Added by Stats.1995, c. 842 (S.B.730), § 8. Amended by Stats.1996, c. 178 (S.B.1650), § 8.)

§ 1890. Order; inclusion in order appointing conservator; limited conservatee; physician's declaration

(a) An order of the court under Section 1880 may be included in the order of appointment of the conservator if the order was requested in the petition for the appointment of the conservator or, except in the case of a limited conservator, may be made subsequently upon a petition made, noticed, and heard by the court in the manner provided in this article.

(b) In the case of a petition filed under this chapter requesting that the court make an order under this chapter or that the court modify or revoke an order made under this chapter, when the order applies to a limited conservatee, the order may only be made upon a petition made, noticed, and heard by the court in the manner provided by Article 3 (commencing with Section 1820) of Chapter 1.

(c) No court order under Section 1880, whether issued as part of an order granting the original petition for appointment of a conservator or issued subsequent thereto, may be granted unless supported by a declaration, filed at or before the hearing on the request, executed by a licensed physician, or a licensed psychologist within the scope of his or her licensure, and stating that the proposed conservatee or the conservatee, as the case may be, lacks the capacity to give an informed consent for any form of medical treatment and the reasons therefor. Nothing in this section shall be construed to expand the scope of practice of psychologists as set forth in the Business and Professions Code.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1992, c. 572 (S.B.1455), § 4; Stats.1996, c. 563 (S.B.392), § 10; Stats.1997, c. 724 (A.B.1172), § 10.)

§ 1891. Petition for order; modification or revocation; contents

(a) A petition may be filed under this article requesting that the

court make an order under Section 1880 or that the court modify or revoke an order made under Section 1880. The petition shall state facts showing that the order requested is appropriate.

(b) The petition may be filed by any of the following:

(1) The conservator.

(2) The conservatee.

(3) The spouse, domestic partner, or any relative or friend of the conservatee.

(c) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse or domestic partner and of the relatives of the conservatee within the second degree.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2001, c. 893 (A.B.25), § 26.)

§ 1892. Notice of hearing

Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1893. Attendance of conservatee at hearing

The conservatee shall be produced at the hearing except in the following cases:

(a) Where the conservatee is out of state when served and is not the petitioner.

(b) Where the conservatee is unable to attend the hearing by reason of medical inability established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and shall not be considered in determining the issue of the legal capacity of the conservatee. Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.

(c) Where the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee (1) is not willing to attend the hearing and (2) does not wish to contest the petition, and the court makes an order that the conservatee need not attend the hearing.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1894. Court investigator; duties; report

If the petition alleges that the conservatee is not willing to attend the hearing or upon receipt of an affidavit or certificate attesting to the medical inability of the conservatee to attend the hearing, the court investigator shall do all of the following:

(a) Interview the conservatee personally.

(b) Inform the conservatee of the contents of the petition, of the nature, purpose, and effect of the proceeding, and of the right of the conservatee to oppose the petition, attend the hearing, and be represented by legal counsel.

(c) Determine whether it appears that the conservatee is unable to attend the hearing and, if able to attend, whether the conservatee is willing to attend the hearing.

(d) Determine whether the conservatee wishes to contest the petition.

(e) Determine whether the conservatee wishes to be represented by legal counsel and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the conservatee wishes to retain.

(f) If the conservatee has not retained counsel, determine whether the conservatee desires the court to appoint legal counsel.

(g) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee in any case where the conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel.

(h) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning both (1) representation by legal counsel and (2) whether the conservatee is not willing to attend the hearing and does not wish to contest the petition.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1895. Hearing, appearances; information to conservatee

(a) The conservatee, the spouse, the domestic partner, any relative, or any friend of the conservatee, the conservator, or any other interested person may appear at the hearing to support or oppose the petition.

(b) Except where the conservatee is absent from the hearing and is not required to attend the hearing under the provisions of Section 1893 and any showing required by Section 1893 has been made, the court shall, prior to granting the petition, inform the conservatee of all of the following:

(1) The nature and purpose of the proceeding.

(2) The nature and effect on the conservatee's basic rights of the order requested.

(3) The conservatee has the right to oppose the petition, to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) After the court informs the conservatee of the matters listed in subdivision (b) and prior to granting the petition, the court shall consult the conservatee to determine the conservatee's opinion concerning the order requested in the petition.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2001, c. 893 (A.B.25), § 27.)

§ 1896. Order; termination

(a) If the court determines that the order requested in the petition is proper, the court shall make the order.

(b) The court, in its discretion, may provide in the order that, unless extended by subsequent order of the court, the order or specific provisions of the order terminate at a time specified in the order.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1897. Duration of order

An order of the court under Section 1880 continues in effect until the earliest of the following times:

(1) The time specified in the order, if any.

(2) The time the order is modified or revoked.

(3) The time the conservatorship is terminated.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 1898. Modification or revocation of order

An order of the court under Section 1880 may be modified or revoked upon a petition made, noticed, and heard by the court in the manner provided in this article.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

Part 4 PROVISIONS COMMON TO GUARDIANSHIP AND CONSERVATORSHIP

Chapter 5 POWERS AND DUTIES OF GUARDIAN OR CONSERVATOR OF THE PERSON

§ 2350. Definitions

As used in this chapter:

(a) "Conservator" means the conservator of the person.

(b) "Guardian" means the guardian of the person.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2351. Care, custody, control and education

(a) Subject to subdivision (b), the guardian or conservator, but not

a limited conservator, has the care, custody, and control of, and has charge of the education of, the ward or conservatee.

(b) Where the court determines that it is appropriate in the circumstances of the particular conservatee, the court, in its discretion, may limit the powers and duties that the conservator would otherwise have under subdivision (a) by an order stating either of the following:

(1) The specific powers that the conservator does not have with respect to the conservatee's person and reserving the powers so specified to the conservatee.

(2) The specific powers and duties the conservator has with respect to the conservatee's person and reserving to the conservatee all other rights with respect to the conservatee's person that the conservator otherwise would have under subdivision (a).

(c) An order under this section (1) may be included in the order appointing a conservator of the person or (2) may be made, modified, or revoked upon a petition subsequently filed, notice of the hearing on the petition having been given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(d) The guardian or conservator, in exercising his or her powers, may not hire or refer any business to an entity in which he or she has a financial interest except upon authorization of the court. Prior to authorization from the court, the guardian or conservator shall disclose to the court in writing his or her financial interest in the entity. For the purposes of this subdivision, "financial interest" shall mean (1) an ownership interest in a sole proprietorship, a partnership, or a closely held corporation, or (2) an ownership interest of greater than 1 percent of the outstanding shares in a publicly traded corporation, or (3) being an officer or a director of a corporation. This subdivision shall apply only to conservators and guardians required to register with the Statewide Registry under Chapter 13 (commencing with Section 2850).

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2000, c. 565 (A.B.1950), § 4.)

§ 2351.5. Limited conservator; modification of powers; notice; hearing

(a) Subject to subdivision (b):

(1) The limited conservator has the care, custody, and control of the limited conservatee.

(2) The limited conservator shall secure for the limited conservatee those habilitation or treatment, training, education, medical and psychological services, and social and vocational opportunity as appropriate and as will assist the limited conservatee in the development of maximum self–reliance and independence.

(b) A limited conservator does not have any of the following powers or controls over the limited conservatee unless those powers or controls are specifically requested in the petition for appointment of a limited conservator and granted by the court in its order appointing the limited conservator:

(1) To fix the residence or specific dwelling of the limited conservatee.

(2) Access to the confidential records and papers of the limited conservatee.

(3) To consent or withhold consent to the marriage of, or the entrance into a registered domestic partnership by, the limited conservatee.

(4) The right of the limited conservatee to contract.

(5) The power of the limited conservatee to give or withhold medical consent.

(6) The limited conservatee's right to control his or her own social and sexual contacts and relationships.

(7) Decisions concerning the education of the limited conservatee.

(c) Any limited conservator, the limited conservatee, or any relative or friend of the limited conservatee may apply by petition to the superior court of the county in which the proceedings are pending to have the limited conservatorship modified by the elimination or addition of any of the powers which must be specifically granted to the limited conservator pursuant to subdivision (b). The petition shall state the facts alleged to establish that the limited conservatorship should be modified. The granting or elimination of those powers is discretionary with the court. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(d) The limited conservator or any relative or friend of the limited conservatee may appear and oppose the petition. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil actions, including trial by jury if demanded. If any of the powers which must be specifically granted to the limited conservator pursuant to subdivision (b) are granted or eliminated, new letters of limited conservatorship shall be issued reflecting the change in the limited conservator's powers.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2005, c. 418 (S.B.973), § 28.)

§ 2352. Residence of ward or conservatee

(a) The guardian or conservator may fix the residence of the ward or conservatee at either of the following:

(1) Any place within this state without the permission of the court. In fixing the residence, the guardian or conservator shall select the least restrictive appropriate setting which is available and necessary to meet the needs of the ward or conservatee, and which is in the best interests of the ward or conservatee. In making a determination of the appropriate level of care for wards or conservatees, guardians or conservators may utilize the statewide nursing home preadmission screening program or a comparable assessment by a community–based case management organization.

(2) A place not within this state if permission of the court is first obtained.

(b) An order under paragraph (2) of subdivision (a) shall require the guardian or conservator either to return the ward or conservatee to this state, or to cause a guardianship or conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the ward or conservatee has resided in the place of new residence for a period of four months or such longer or shorter period as is specified in the order.

(c) The guardian or conservator shall promptly mail to the court notice of all changes in the residence of the ward or conservatee.

(d) This section does not apply where the court has made an order under Section 2351 pursuant to which the conservatee retains the right to fix his or her own residence.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2353. Medical treatment of ward

(a) Subject to subdivision (b), the guardian has the same right as a parent having legal custody of a child to give consent to medical treatment performed upon the ward and to require the ward to receive medical treatment.

(b) Except as provided in subdivision (c), if the ward is 14 years of age or older, no surgery may be performed upon the ward without either (1) the consent of both the ward and the guardian or (2) a court order obtained pursuant to Section 2357 specifically authorizing such treatment.

(c) The guardian may consent to surgery to be performed upon the ward, and may require the ward to receive the surgery, in any case where the guardian determines in good faith based upon medical advice that the case is an emergency case in which the ward faces loss of life or serious bodily injury if the surgery is not performed. In such a case, the consent of the guardian alone is sufficient and no person is liable because the surgery is performed upon the ward without the ward's consent.

(d) Nothing in this section requires the consent of the guardian for medical or surgical treatment for the ward in any case where the ward

alone may consent to such treatment under other provisions of law.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2354. Medical treatment of conservatee not adjudicated to lack capacity to give informed consent

(a) If the conservatee has not been adjudicated to lack the capacity to give informed consent for medical treatment, the conservatee may consent to his or her medical treatment. The conservator may also give consent to the medical treatment, but the consent of the conservator is not required if the conservatee has the capacity to give informed consent to the medical treatment, and the consent of the conservator alone is not sufficient under this subdivision if the conservatee objects to the medical treatment.

(b) The conservator may require the conservatee to receive medical treatment, whether or not the conservatee consents to the treatment, if a court order specifically authorizing the medical treatment has been obtained pursuant to Section 2357.

(c) The conservator may consent to medical treatment to be performed upon the conservatee, and may require the conservatee to receive the medical treatment, in any case where the conservator determines in good faith based upon medical advice that the case is an emergency case in which the medical treatment is required because (1) the treatment is required for the alleviation of severe pain or (2) the conservatee has a medical condition which, if not immediately diagnosed and treated, will lead to serious disability or death. In such a case, the consent of the conservator alone is sufficient and no person is liable because the medical treatment is performed upon the conservatee without the conservatee's consent.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2355. Medical treatment of conservatee adjudicated to lack capacity to make health care decisions

(a) If the conservatee has been adjudicated to lack the capacity to make health care decisions, the conservator has the exclusive authority to make health care decisions for the conservatee that the conservator in good faith based on medical advice determines to be necessary. The conservator shall make health care decisions for the conservatee in accordance with the conservatee's individual health care instructions, if any, and other wishes to the extent known to the conservator. Otherwise, the conservator shall make the decision in accordance with the conservator's determination of the conservatee's best interest. In determining the conservatee's best interest, the conservator shall consider the conservatee's personal values to the extent known to the conservator. The conservator may require the conservatee to receive the health care, whether or not the conservatee objects. In this case, the health care decision of the conservator alone is sufficient and no person is liable because the health care is administered to the conservatee without the conservatee's consent. For the purposes of this subdivision, "health care" and "health care decision" have the meanings provided in Sections 4615 and 4617, respectively.

(b) If prior to the establishment of the conservatorship the conservatee was an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing, the treatment required by the conservator under the provisions of this section shall be by an accredited practitioner of that religion.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1999, c. 658 (A.B.891), § 12, operative July 1, 2000.)

§ 2356. Limitations on application of chapter

(a) No ward or conservatee may be placed in a mental health treatment facility under this division against the will of the ward or conservatee. Involuntary civil placement of a ward or conservatee in a mental health treatment facility may be obtained only pursuant to Chapter 2 (commencing with Section 5150) or Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Nothing in this subdivision precludes the placing of a ward in a state hospital under Section 6000 of the Welfare and Institutions Code upon application of the guardian as provided in that section. The Director of Mental Health shall adopt and issue regulations defining "mental health treatment facility" for the purposes of this subdivision.

(b) No experimental drug as defined in Section 111515 of the Health and Safety Code may be prescribed for or administered to a ward or conservatee under this division. Such an experimental drug may be prescribed for or administered to a ward or conservatee only as provided in Article 4 (commencing with Section 111515) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(c) No convulsive treatment as defined in Section 5325 of the Welfare and Institutions Code may be performed on a ward or conservatee under this division. Convulsive treatment may be performed on a ward or conservatee only as provided in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code.

(d) No minor may be sterilized under this division.

(e) This chapter is subject to a valid and effective advance health care directive under the Health Care Decisions Law (Division 4.7 (commencing with Section 4600)).
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1990, c. 710 (S.B.1775), § 8, operative July 1, 1991; Stats.1996, c. 1023 (S.B.1497), § 398, eff. Sept. 29, 1996; Stats.1999, c. 658 (A.B.891), § 13, operative July 1, 2000.)

§ 2356.5. Dementia; placement in secured facility; administration of medication; procedures; application

(a) The Legislature hereby finds and declares:

(1) That people with dementia, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental Disorders," should have a conservatorship to serve their unique and special needs.

(2) That, by adding powers to the probate conservatorship for people with dementia, their unique and special needs can be met. This will reduce costs to the conservatee and the family of the conservatee, reduce costly administration by state and county government, and safeguard the basic dignity and rights of the conservatee.

(3) That it is the intent of the Legislature to recognize that the administration of psychotropic medications has been, and can be, abused by caregivers and, therefore, granting powers to a conservator to authorize these medications for the treatment of dementia requires the protections specified in this section.

(b) Notwithstanding any other provision of law, a conservator may authorize the placement of a conservatee in a secured perimeter residential care facility for the elderly operated pursuant to Section 1569.698 of the Health and Safety Code, or a locked and secured nursing facility which specializes in the care and treatment of people with dementia pursuant to subdivision (c) of Section 1569.691 of the Health and Safety Code, and which has a care plan that meets the requirements of Section 87724 of Title 22 of the California Code of Regulations, upon a court's finding, by clear and convincing evidence, of all of the following:

(1) The conservatee has dementia, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental Disorders."

(2) The conservatee lacks the capacity to give informed consent to this placement and has at least one mental function deficit pursuant to subdivision (a) of Section 811, and this deficit significantly impairs the person's ability to understand and appreciate the consequences of his or her actions pursuant to subdivision (b) of Section 811.

(3) The conservatee needs or would benefit from a restricted and secure environment, as demonstrated by evidence presented by the physician or psychologist referred to in paragraph (3) of subdivision (f).

(4) The court finds that the proposed placement in a locked facility is the least restrictive placement appropriate to the needs of the conservatee.

(c) Notwithstanding any other provision of law, a conservator of a person may authorize the administration of medications appropriate for the care and treatment of dementia, upon a court's finding, by clear and convincing evidence, of all of the following:

(1) The conservatee has dementia, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental Disorders."

(2) The conservatee lacks the capacity to give informed consent to the administration of medications appropriate to the care of dementia, and has at least one mental function deficit pursuant to subdivision (a) of Section 811, and this deficit or deficits significantly impairs the person's ability to understand and appreciate the consequences of his or her actions pursuant to subdivision (b) of Section 811.

(3) The conservatee needs or would benefit from appropriate medication as demonstrated by evidence presented by the physician or psychologist referred to in paragraph (3) of subdivision (f).

(d) Pursuant to subdivision (b) of Section 2355, in the case of a person who is an adherent of a religion whose tenets and practices call for a reliance on prayer alone for healing, the treatment required by the conservator under subdivision (c) shall be by an accredited practitioner of that religion in lieu of the administration of medications.

(e) A conservatee who is to be placed in a facility pursuant to this section shall not be placed in a mental health rehabilitation center as described in Section 5675 of the Welfare and Institutions Code, or in an institution for mental disease as described in Section 5900 of the Welfare and Institutions Code.

(f) A petition for authority to act under this section shall be governed by Section 2357, except:

(1) The conservatee shall be represented by an attorney pursuant to Chapter 4 (commencing with Section 1470) of Part 1.

(2) The conservatee shall be produced at the hearing, unless excused pursuant to Section 1893.

(3) The petition shall be supported by a declaration of a licensed physician, or a licensed psychologist within the scope of his or her licensure, regarding each of the findings required to be made under this section for any power requested, except that the psychologist has at least two years of experience in diagnosing dementia.

(4) The petition may be filed by any of the persons designated in Section 1891.

(g) The court investigator shall annually investigate and report to the court every two years pursuant to Sections 1850 and 1851 if the conservator is authorized to act under this section. In addition to the other matters provided in Section 1851, the conservatee shall be specifically advised by the investigator that the conservatee has the right to object to the conservator's powers granted under this section, and the report shall also include whether powers granted under this section are warranted. If the conservatee objects to the conservator's powers granted under this section, or the investigator determines that some change in the powers granted under this section is warranted, the court shall provide a copy of the report to the attorney of record for the conservatee. If no attorney has been appointed for the conservatee, one shall be appointed pursuant to Chapter 4 (commencing with Section 1470) of Part 1. The attorney shall, within 30 days after receiving this report, do one of the following:

(1) File a petition with the court regarding the status of the conservatee.

(2) File a written report with the court stating that the attorney has met with the conservatee and determined that the petition would be inappropriate.

(h) A petition to terminate authority granted under this section shall be governed by Section 2359.

(i) Nothing in this section shall be construed to affect a conservatorship of the estate of a person who has dementia.

(j) Nothing in this section shall affect the laws that would otherwise apply in emergency situations.

(k) Nothing in this section shall affect current law regarding the power of a probate court to fix the residence of a conservatee or to authorize medical treatment for any conservatee who has not been determined to have dementia.

(*l*)(1) Until such time as the conservatorship becomes subject to review pursuant to Section 1850, this section shall not apply to a conservatorship established on or before the effective date of the adoption of Judicial Council forms that reflect the procedures authorized by this section, or January 1, 1998, whichever occurs first.

(2) Upon the adoption of Judicial Council forms that reflect the procedures authorized by this section or January 1, 1998, whichever occurs first, this section shall apply to any conservatorships established after that date.

(Added by Stats.1996, c. 910 (S.B.1481), § 1. Amended by Stats.1997, c. 724 (A.B.1172), § 13; Stats.2003, c. 32 (A.B.167), § 2.)

§ 2357. Court ordered medical treatment

(a) As used in this section:

(1) "Guardian or conservator" includes a temporary guardian of the person or a temporary conservator of the person.

(2) "Ward or conservatee" includes a person for whom a temporary guardian of the person or temporary conservator of the person has been appointed.

(b) If the ward or conservatee requires medical treatment for an existing or continuing medical condition which is not authorized to be performed upon the ward or conservatee under Section 2252, 2353, 2354, or 2355, and the ward or conservatee is unable to give an informed consent to this medical treatment, the guardian or conservator may petition the court under this section for an order authorizing the medical treatment and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to the medical treatment.

(c) The petition shall state, or set forth by medical affidavit attached thereto, all of the following so far as is known to the petitioner at the time the petition is filed:

(1) The nature of the medical condition of the ward or conservatee which requires treatment.

(2) The recommended course of medical treatment which is considered to be medically appropriate.

(3) The threat to the health of the ward or conservatee if authorization to consent to the recommended course of treatment is delayed or denied by the court.

(4) The predictable or probable outcome of the recommended course of treatment.

(5) The medically available alternatives, if any, to the course of treatment recommended.

(6) The efforts made to obtain an informed consent from the ward or conservatee.

(7) The name and addresses, so far as they are known to the petitioner, of the persons specified in subdivision (c) of Section 1510 in a guardianship proceeding or subdivision (b) of Section 1821 in a conservatorship proceeding.

(d) Upon the filing of the petition, unless an attorney is already appointed the court shall appoint the public defender or private counsel under Section 1471, to consult with and represent the ward or conservatee at the hearing on the petition and, if that appointment is made, Section 1472 applies.

(e) Notice of the petition shall be given as follows:

(1) Not less than 15 days before the hearing, notice of the time and place of the hearing, and a copy of the petition shall be personally served on the ward, if 12 years of age or older, or the conservatee, and on the attorney for the ward or conservatee.

(2) Not less than 15 days before the hearing, notice of the time and

place of the hearing, and a copy of the petition shall be mailed to the following persons:

(A) The spouse or domestic partner, if any, of the proposed conservatee at the address stated in the petition.

(B) The relatives named in the petition at their addresses stated in the petition.

(f) For good cause, the court may shorten or waive notice of the hearing as provided by this section. In determining the period of notice to be required, the court shall take into account both of the following:

(1) The existing medical facts and circumstances set forth in the petition or in a medical affidavit attached to the petition or in a medical affidavit presented to the court.

(2) The desirability, where the condition of the ward or conservatee permits, of giving adequate notice to all interested persons.

(g) Notwithstanding subdivisions (e) and (f), the matter may be submitted for the determination of the court upon proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the ward or conservatee so stipulate and further stipulate that there remains no issue of fact to be determined.

(h) The court may make an order authorizing the recommended course of medical treatment of the ward or conservatee and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to the recommended course of medical treatment for the ward or conservatee if the court determines from the evidence all of the following:

(1) The existing or continuing medical condition of the ward or conservatee requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life–endangering or result in a serious threat to the physical or mental health of the ward or conservatee.

(3) The ward or conservatee is unable to give an informed consent to the recommended course of treatment.

(i) Upon petition of the ward or conservatee or other interested person, the court may order that the guardian or conservator obtain or consent to, or obtain and consent to, specified medical treatment to be performed upon the ward or conservatee. Notice of the hearing on the petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1990, c. 710 (S.B.1775), § 9, operative July 1, 1991; Stats.1999, c. 175 (A.B.239), § 2; Stats.2000, c. 135 (A.B.2539), § 143; Stats.2001, c. 893 (A.B.25), § 31.)

§ 2358. Additional conditions in order of appointment

When a guardian or conservator is appointed, the court may, with the consent of the guardian or conservator, insert in the order of appointment conditions not otherwise obligatory providing for the care, treatment, education, and welfare of the ward or conservatee. Any such conditions shall be included in the letters. The performance of such conditions is a part of the duties of the guardian or conservator for the faithful performance of which the guardian or conservator and the sureties on the bond are responsible.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2359. Petitions of guardian, conservator, ward or conservatee; approval of purchase, lease, or rental of property from estate; violations of section

(a) Upon petition of the guardian or conservator or ward or conservatee or other interested person, the court may authorize and instruct the guardian or conservator or approve and confirm the acts of the guardian or conservator.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c)(1) When a guardian or conservator petitions for the approval of a purchase, lease, or rental of real or personal property from the estate of a ward or conservatee, the guardian or conservator shall provide a statement disclosing the family or affiliate relationship between the guardian and conservator and the purchaser, lessee, or renter of the property, and the family or affiliate relationship between the guardian or conservator and any agent hired by the guardian or conservator.

(2) For the purposes of this subdivision, “family” means a person’s spouse, domestic partner, or relatives within the second degree of lineal or collateral consanguinity of a person or a person’s spouse. For the purposes of this subdivision, “affiliate” means an entity that is under the direct control, indirect control, or common control of the guardian or conservator.

(3) A violation of this section shall result in the rescission of the purchase, lease, or rental of the property. Any losses incurred by the estate of the ward or conservatee because the property was sold or leased at less than fair market value shall be deemed as charges against the guardian or conservator under the provisions of Sections 2401.3 and 2401.5. The court shall assess a civil penalty equal to three times the charges against the guardian, conservator, or other person in violation of this section, and may assess punitive damages as it deems proper. If the estate does not incur losses as a result of the violation, the court shall order the guardian, conservator, or other person in violation of this section to pay a fine of up to five thousand dollars ($5,000) for each violation. The fines and penalties provided in this section are in addition to any other rights and remedies provided by law.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2000, c. 565 (A.B.1950), § 5; Stats.2001, c. 893 (A.B.25), § 32.)

Chapter 6 POWERS AND DUTIES OF GUARDIAN OR CONSERVATOR OF THE ESTATE

Article 2 SUPPORT AND MAINTENANCE OF WARD OR CONSERVATEE AND DEPENDENTS

§ 2420. Support, maintenance and education

(a) Subject to Section 2422, the guardian or conservator shall apply the income from the estate, so far as necessary, to the comfortable and suitable support, maintenance, and education of the ward or conservatee (including care, treatment, and support of a ward or conservatee who is a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services) and of those legally entitled to support, maintenance, or education from the ward or conservatee, taking into account the value of the estate and the condition of life of the persons required to be furnished such support, maintenance, or education.

(b) If the income from the estate is insufficient for the purpose described in subdivision (a), the guardian or conservator may sell or give a security interest in or other lien on any personal property of the estate, or sell or mortgage or give a deed of trust on any real property of the estate, as provided in this part.

(c) When the amount paid by the guardian or conservator for the purpose described in subdivision (a) satisfies the standard set out in that subdivision, and the payments are supported by proper vouchers or other proof satisfactory to the court, the guardian or conservator shall be allowed credit for such payments when the accounts of the guardian or conservator are settled.

(d) Nothing in this section requires the guardian or conservator to obtain court authorization before making the payments authorized by this section, but nothing in this section dispenses with the need to obtain any court authorization otherwise required for a particular transaction.

(e) Nothing in this section precludes the guardian or conservator from seeking court authorization or instructions or approval and confirmation pursuant to Section 2403.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2421. Allowance for ward or conservatee

(a) Upon petition of the guardian or conservator or the ward or conservatee, the court may authorize the guardian or conservator to pay to the ward or conservatee out of the estate a reasonable allowance for the personal use of the ward or conservatee. The allowance shall be in such amount as the court may determine to be for the best interests of the ward or conservatee.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) The guardian or conservator is not required to account for such allowance other than to establish that it has been paid to the ward or conservatee. The funds so paid are subject to the sole control of the ward or conservatee.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2422. Order authorizing support notwithstanding third party liability

(a) Upon petition of the guardian or conservator, the ward or conservatee, or any other interested person, the court may for good cause order the ward or conservatee to be wholly or partially supported, maintained, or educated out of the estate notwithstanding the existence of a third party legally obligated to provide such support, maintenance, or education. Such order may be made for a limited period of time. If not so limited, it continues in effect until modified or revoked.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2423. Payment of surplus income to relatives of conservatee

(a) Upon petition of the conservator, the conservatee, the spouse or domestic partner of the conservatee, or a relative within the second degree of the conservatee, the court may by order authorize or direct the conservator to pay and distribute surplus income of the estate or any part of the surplus income (not used for the support, maintenance, and education of the conservatee and of those legally entitled to support, maintenance, or education from the conservatee) to the spouse or domestic partner of the conservatee and to relatives within the second degree of the conservatee whom the conservatee would, in the judgment of the court, have aided but for the existence of the conservatorship. The court in ordering payments under this section may impose conditions if the court determines that the conservatee would have imposed the conditions if the conservatee had the capacity to act.

(b) The granting of the order and the amounts and proportions of the payments are discretionary with the court, but the court shall consider all of the following:

(1) The amount of surplus income available after adequate provision has been made for the comfortable and suitable support, maintenance, and education of the conservatee and of those legally entitled to support, maintenance, or education from the conservatee.

(2) The circumstances and condition of life to which the conservatee and the spouse or domestic partner and relatives have been accustomed.

(3) The amount that the conservatee would in the judgment of the court have allowed the spouse or domestic partner and relatives but for the existence of the conservatorship.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2001, c. 893 (A.B.25), § 34.)

Article 7 SALES

§ 2540. Court supervision; exceptions; personal residence

(a) Except as otherwise provided in Sections 2544 and 2545, and except for the sale of a conservatee's personal residence as set forth in subdivision (b), sales of real or personal property of the estate under this article are subject to authorization, confirmation, or direction of the court, as provided in this article.

(b) In seeking authorization to sell a conservatee's present or former personal residence, the conservator shall notify the court that the personal residence is proposed to be sold and that the conservator has discussed the proposed sale with the conservatee. In addition, the conservator shall inform the court whether the conservatee supports or is opposed to the proposed sale and shall describe the circumstances that necessitate the proposed sale, including whether the conservatee has the ability to live in the residence. The court, in its discretion, may require the court investigator to discuss the proposed sale with the conservatee. This subdivision shall not apply when the conservator is granted the power to sell real property of the estate pursuant to Section 2590.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2541. Purpose

The guardian or conservator may sell real or personal property of the estate in any of the following cases:

(a) Where the income of the estate is insufficient for the comfortable and suitable support, maintenance, and education of the ward or conservatee (including care, treatment, and support of the ward or conservatee if a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services) or of those legally entitled to support, maintenance, or education from the ward or conservatee.

(b) Where the sale is necessary to pay the debts referred to in Sections 2430 and 2431.

(c) Where the sale is for the advantage, benefit, and best interest of (1) the ward or conservatee, (2) the estate, or (3) the ward or conservatee and those legally entitled to support, maintenance, or education from the ward or conservatee.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2542. Terms of sales

(a) All sales shall be for cash or for part cash and part deferred payments. Except as otherwise provided in Sections 2544 and 2545, the terms of sale are subject to the approval of the court.

(b) If real property is sold for part deferred payments, the guardian or conservator shall take the note of the purchaser for the unpaid portion of the purchase money, with a mortgage or deed of trust on the property to secure payment of the note. The mortgage or deed of trust shall be subject only to encumbrances existing at the date of sale and such other encumbrances as the court may approve.

(c) If real or personal property of the estate sold for part deferred payments consists of an undivided interest, a joint tenancy interest, or any other interest less than the entire ownership, and the owner or owners of the remaining interests in the property join in the sale, the note and deed of trust or mortgage may be made to the ward or conservatee and the other owner or owners.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2543. Manner of sale

(a) If estate property is required or permitted to be sold, the guardian or conservator may:

(1) Use discretion as to which property to sell first.

(2) Sell the entire interest of the estate in the property or any lesser interest therein.

(3) Sell the property either at public auction or private sale.

(b) Subject to Section 1469, unless otherwise specifically provided in this article, all proceedings concerning sales by guardians or conservators, giving notice of sale, reselling the same property, return

of sale and application for confirmation thereof, notice and hearing of such application, making orders authorizing sales, rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, and allowance of commissions, shall conform, as nearly as may be, to the provisions of this code concerning sales by a personal representative, other than the Independent Administration of Estates Act, Part 6 (commencing with Section 10400) of Division 7.

(c) The clerk of the court shall cause notice to be posted pursuant to subdivision (b) only in the following cases:

(1) Where posting of notice of hearing is required on a petition for the confirmation of a sale of real or personal property of the estate.

(2) Where posting of notice of a sale governed by Section 10250 (sales of personal property) is required or authorized.

(3) In any case where posting of notice is ordered by the court.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2544. Sale of securities

(a) Except as specifically limited by order of the court, subject to Section 2541, the guardian or conservator may sell securities without authorization, confirmation, or direction of the court if any of the following conditions is satisfied:

(1) The securities are to be sold on an established stock or bond exchange.

(2) The securities to be sold are securities designated as a national market system security on an interdealer quotation system or subsystem thereof, by the National Association of Securities Dealers, Inc., sold through a broker–dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker–dealer.

(3) The securities are to be directly redeemed by the issuer thereof.

(b) Section 2543 does not apply to sales under this section.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1996, c. 86 (A.B.2146), § 2.)

§ 2544.5. Sale of mutual funds held without beneficiary designation

Except as specifically limited by the court, subject to Section 2541, the guardian or conservator may sell mutual funds held without designation of a beneficiary without authorization, confirmation, or direction of the court. Section 2543 does not apply to sales under this section.

(Added by Stats.1996, c. 86 (A.B.2146), § 2.5.)

§ 2545. Sale or other disposition of tangible personal property

(a) Subject to subdivisions (b) and (c) and to Section 2541, the guardian or conservator may sell or exchange tangible personal property of the estate without authorization, confirmation, or direction of the court.

(b) The aggregate of the sales or exchanges made during any calendar year under this section may not exceed five thousand dollars ($5,000).

(c) A sale or exchange of personal effects or of furniture or furnishings used for personal, family, or household purposes may be made under this section only if:

(1) In the case of a guardianship, the ward is under the age of 14 or, if 14 years of age or over, consents to the sale or exchange.

(2) In the case of a conservatorship, the conservatee either (i) consents to the sale or exchange or (ii) the conservatee does not have legal capacity to give such consent.

(d) Failure of the guardian or conservator to observe the limitations of subdivision (b) or (c) does not invalidate the title of, or impose any liability upon, a third person who acts in good faith and without actual notice of the lack of authority of the guardian or conservator.

(e) Subdivision (b) of Section 2543 does not apply to sales under this section.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2547. Disposition of proceeds of sale

The guardian or conservator shall apply the proceeds of the sale to the purposes for which it was made, as far as necessary, and the residue, if any, shall be managed as the other property of the estate.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2548. Recovery of property sold; limitation of action

No action for the recovery of any property sold by a guardian or conservator may be maintained by the ward or conservatee or by any person claiming under the ward or conservatee unless commenced within the later of the following times:

(a) Three years after the termination of the guardianship or conservatorship.

(b) When a legal disability to sue exists by reason of minority or otherwise at the time the cause of action accrues, within three years after the removal thereof.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

Article 10 SUBSTITUTED JUDGMENT

§ 2580. Petition to authorize proposed action

(a) The conservator or other interested person may file a petition under this article for an order of the court authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes:

(1) Benefiting the conservatee or the estate.

(2) Minimizing current or prospective taxes or expenses of administration of the conservatorship estate or of the estate upon the death of the conservatee.

(3) Providing gifts for any purposes, and to any charities, relatives (including the other spouse or domestic partner), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the conservatee.

(b) The action proposed in the petition may include, but is not limited to, the following:

(1) Making gifts of principal or income, or both, of the estate, outright or in trust.

(2) Conveying or releasing the conservatee's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(3) Exercising or releasing the conservatee's powers as donee of a power of appointment.

(4) Entering into contracts.

(5) Creating for the benefit of the conservatee or others, revocable or irrevocable trusts of the property of the estate, which trusts may extend beyond the conservatee's disability or life. A special needs trust for money paid pursuant to a compromise or judgment for a conservatee may be established only under Chapter 4 (commencing with Section 3600) of Part 8, and not under this article.

(6) Transferring to a trust created by the conservator or conservatee any property unintentionally omitted from the trust.

(7) Exercising options of the conservatee to purchase or exchange securities or other property.

(8) Exercising the rights of the conservatee to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:

(A) Life insurance policies, plans, or benefits.

(B) Annuity policies, plans, or benefits.

(C) Mutual fund and other dividend investment plans.

(D) Retirement, profit sharing, and employee welfare plans and benefits.

(9) Exercising the right of the conservatee to elect to take under or against a will.

(10) Exercising the right of the conservatee to disclaim any interest that may be disclaimed under Part 8 (commencing with Section 260) of Division 2.

(11) Exercising the right of the conservatee (A) to revoke or modify a revocable trust or (B) to surrender the right to revoke or modify a revocable trust, but the court shall not authorize or require the conservator to exercise the right to revoke or modify a revocable trust if the instrument governing the trust (A) evidences an intent to reserve the right of revocation or modification exclusively to the conservatee, (B) provides expressly that a conservator may not revoke or modify the trust, or (C) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke or modify the trust.

(12) Making an election referred to in Section 13502 or an election and agreement referred to in Section 13503.

(13) Making a will.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1992, c. 355 (A.B.3328), § 1; Stats.1992, c. 572 (S.B.1455), § 6.5; Stats.1995, c. 730 (A.B.1466), § 4; Stats.1999, c; 175 (A.B.239), § 3; Stats.2001, c. 893 (A.B.25), § 38.)

§ 2581. Notice of hearing of petition

Notice of the hearing of the petition shall be given, regardless of age, for the period and in the manner provided in Chapter 3 (commencing with Section 1460) or Part 1 to all of the following:

(a) The persons required to be given notice under Chapter 3 (commencing with Section 1460) of Part 1.

(b) The persons required to be named in a petition for the appointment of a conservator.

(c) So far as is known to the petitioner, beneficiaries under any document executed by the conservatee which may have testamentary effect unless the court for good cause dispenses with such notice.

(d) So far as is known to the petitioner, the persons who, if the conservatee were to die immediately, would be the conservatee's heirs under the laws of intestate succession unless the court for good cause dispenses with such notice.

(e) Such other persons as the court may order.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1996, c. 862 (A.B.2751), § 8.)

§ 2582. Consent or lack of capacity of conservatee; adequate provision for conservatee and dependents

The court may make an order authorizing or requiring the proposed action under this article only if the court determines all of the following:

(a) The conservatee either (1) is not opposed to the proposed action or (2) if opposed to the proposed action, lacks legal capacity for the proposed action.

(b) Either the proposed action will have no adverse effect on the estate or the estate remaining after the proposed action is taken will be adequate to provide for the needs of the conservatee and for the support of those legally entitled to support, maintenance, and education from the conservatee, taking into account the age, physical condition, standards of living, and all other relevant circumstances of the conservatee and those legally entitled to support, maintenance, and education from the conservatee.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2583. Proposed actions by court; relevant circumstances

In determining whether to authorize or require a proposed action under this article, the court shall take into consideration all the relevant circumstances, which may include, but are not limited to, the following:

(a) Whether the conservatee has legal capacity for the proposed transaction and, if not, the probability of the conservatee's recovery of legal capacity.

(b) The past donative declarations, practices, and conduct of the conservatee.

(c) The traits of the conservatee.

(d) The relationship and intimacy of the prospective donees with the conservatee, their standards of living, and the extent to which they would be natural objects of the conservatee's bounty by any objective test based on such relationship, intimacy, and standards of living.

(e) The wishes of the conservatee.

(f) Any known estate plan of the conservatee (including, but not limited to, the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated).

(g) The manner in which the estate would devolve upon the conservatee's death, giving consideration to the age and the mental and physical condition of the conservatee, the prospective devisees or heirs of the conservatee, and the prospective donees.

(h) The value, liquidity, and productiveness of the estate.

(i) The minimization of current or prospective income, estate, inheritance, or other taxes or expenses of administration.

(j) Changes of tax laws and other laws which would likely have motivated the conservatee to alter the conservatee's estate plan.

(k) The likelihood from all the circumstances that the conservatee as a reasonably prudent person would take the proposed action if the conservatee had the capacity to do so.

(*l*) Whether any beneficiary is a person described in paragraph (1) of subdivision (b) of Section 21350.

(m) Whether a beneficiary has committed physical abuse, neglect, false imprisonment, or fiduciary abuse against the conservatee after the conservatee was substantially unable to manage his or her financial resources, or resist fraud or undue influence, and the conservatee's disability persisted throughout the time of the hearing on the proposed substituted judgment.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1992, c. 871 (A.B.2975), § 6; Stats.1993, c. 293 (A.B.21), § 3; Stats.1998, c. 935 (S.B.1715), § 5.)

§ 2584. Determination and order

After hearing, the court, in its discretion, may approve, modify and approve, or disapprove the proposed action and may authorize or direct the conservator to transfer or dispose of assets or take other action as provided in the court's order.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2585. No duty to propose action

Nothing in this article imposes any duty on the conservator to propose any action under this article, and the conservator is not liable for failure to propose any action under this article.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2586. Production of conservatee's will and other relevant estate plan documents; safekeeping of documents by custodian appointed by the court

(a) As used in this section, "estate plan of the conservatee" includes, but is not limited to, the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated.

(b) Notwithstanding Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code (lawyer–client privilege), the court, in its discretion, may order that any person having possession of any document constituting all or part of the estate plan of the conservatee shall deliver the document to the court for examination by the court, and, in the discretion of the court, by the attorneys for the persons who have appeared in the proceedings under this article, in connection with the petition filed under this article.

(c) Unless the court otherwise orders, no person who examines any document produced pursuant to an order under this section shall disclose the contents of the document to any other person. If that disclosure is made, the court may adjudge the person making the disclosure to be in contempt of court.

(d) For good cause, the court may order that a document constituting all or part of the estate plan of the conservatee, whether or not produced pursuant to an order under this section, shall be delivered for safekeeping to the custodian designated by the court. The court may impose those conditions it determines are appropriate for holding and safeguarding the document. The court may authorize the conservator to take any action a depositor may take under Part 15 (commencing with Section 700) of Division 2.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1993, c. 519 (A.B.209), § 5.)

Chapter 7 INVENTORY AND ACCOUNTS

Article 2 INVENTORY AND APPRAISAL OF ESTATE

§ 2610. Filing inventory and appraisal

(a) Within 90 days after appointment, or within such further time as the court for reasonable cause upon ex parte petition of the guardian or conservator may allow, the guardian or conservator shall file with the clerk of the court an inventory and appraisal of the estate, made as of the date of the appointment of the guardian or conservator.

(b) The guardian or conservator shall take and subscribe to an oath that the inventory contains a true statement of all of the estate of the ward or conservatee of which the guardian or conservator has possession or knowledge. The oath shall be endorsed upon or annexed to the inventory.

(c) The property described in the inventory shall be appraised in the manner provided for the inventory and appraisal of estates of decedents. The guardian or conservator may appraise the assets that a personal representative could appraise under Section 8901.

(d) If a conservatorship is initiated pursuant to the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) and no sale of the estate will occur:

(1) The inventory and appraisal required by subdivision (a) shall be filed within 90 days after appointment of the conservator.

(2) The property described in the inventory may be appraised by the conservator and need not be appraised by a probate referee.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2611. Copy to directors of mental health or developmental services

If the ward or conservatee is or has been during the guardianship or conservatorship a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the guardian or conservator shall mail a copy of the inventory and appraisal filed under Section 2610 to the director of the appropriate department at the director's office in Sacramento not later than 15 days after the inventory and appraisal is filed with the court. Compliance with this section is not required if an unrevoked certificate described in subdivision (c) of Section 1461 is on file with the court with respect to the ward or conservatee.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2612. Copy to county assessor

If a timely request is made, the clerk of court shall mail a copy of the inventory and appraisal filed under Section 2610 to the county assessor.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2613. Subsequently discovered or acquired property; supplemental inventory and appraisement

Whenever any property of the ward or conservatee is discovered that was not included in the inventory, or whenever any other property is received by the ward or conservatee or by the guardian or conservator on behalf of the ward or conservatee (other than by the actions of the guardian or conservator in the investment and management of the estate), the guardian or conservator shall file a supplemental inventory and appraisal for that property and like proceedings shall be followed with respect thereto as in the case of an original inventory, but the appraisal shall be made as of the date the property was so discovered or received.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2614. Objections to appraisals

(a) Within 30 days after the inventory and appraisal is filed, the guardian or conservator or any creditor or other interested person may file written objections to any or all appraisals. The clerk shall set the objections for hearing not less than 15 days after their filing.

(b) Notice of the hearing, together with a copy of the objections, shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. If the appraisal was made by a probate referee, the person objecting shall also mail notice of the hearing and a copy of the objection to the probate referee at least 15 days before the time set for the hearing.

(c) The court shall determine the objections and may fix the true value of any asset to which objection has been filed. For the purpose of this subdivision, the court may cause an independent appraisal or appraisals to be made by at least one additional appraiser at the expense of the estate or, if the objecting party is not the guardian or conservator and the objection is rejected by the court, the court may assess the cost of any such additional appraisal or appraisals against the objecting party.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2614.5. Failure to file inventory and appraisal; removal of guardian or conservator

(a) If the guardian or conservator fails to file an inventory and appraisal within the time allowed by law or by court order, upon request of the ward or conservatee, the spouse of the ward or the spouse or domestic partner of the conservatee, any relative or friend of the ward or conservatee, or any interested person, the court shall order the guardian or conservator to file the inventory and appraisal within the time prescribed in the order or to show cause why the guardian or conservator should not be removed. The person who requested the order shall serve it upon the guardian or conservator in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in a manner as is ordered by the court.

(b) If the guardian or conservator fails to file the inventory and appraisal as required by the order within the time prescribed in the order, unless good cause is shown for not doing so, the court, on its own motion or on petition, may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly, and order the guardian or conservator to file an account and to surrender the estate to the person legally entitled thereto.

(c) The procedure provided in this section is optional and does not preclude the use of any other remedy or sanction when an inventory and appraisal is not timely filed.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2001, c. 893 (A.B.25), § 39.)

§ 2615. Failure to file inventory; liability; damages; bond

If a guardian or conservator fails to file any inventory required by this article within the time prescribed by law or by court order, the guardian or conservator is liable for damages for any injury to the estate, or to any interested person, directly resulting from the failure timely to file the inventory. Damages awarded pursuant to this section are a personal liability of the guardian or conservator and a liability on the bond, if any.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

Article 3 ACCOUNTS

§ 2620. Periodic accounting of guardian or conservator; final court accounting; filing of original account statements

(a) At the expiration of one year from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered by the court, the guardian or conservator shall present the accounting of the assets of the estate of the ward or conservatee to the court for settlement and allowance in the manner provided in Chapter 4 (commencing with Section 1060) of Part 1 of Division 3.

(b) The final court accounting of the guardian or conservator following the death of the ward or conservatee shall include a court accounting for the period that ended on the date of death and a separate accounting for the period subsequent to the date of death.

(c) Along with each court accounting, the guardian or conservator shall file all original account statements from any institution, as defined in Section 2890, or any financial institution, as defined in Section 2892, in which money or other assets of the estate are held or deposited, showing the balance as of the close of the accounting period of the court accounting. If the court accounting is the first court accounting of the guardianship or conservatorship, the guardian or conservator shall provide to the court the account statement for the account balance immediately preceding the date the conservator or guardian was appointed and the account statement or statements for the account through the closing date of the first court accounting. This subdivision shall not apply to the public guardian if the money belonging to the estate is pooled with money belonging to other estates pursuant to Section 2940 and Article 3 (commencing with Section 7640) of Chapter 4 of Part 1 of Division 7. Nothing in this section shall affect any other duty or responsibility of the public guardian with regard to managing money belonging to the estate or filing accountings with the court.

(d) If any document to be filed with the court under this section contains the ward or conservatee's social security number or any other personal information regarding the ward or conservatee that would not ordinarily be disclosed in a court accounting, an inventory and appraisal, or other nonconfidential pleadings filed in the action, the account statement shall be attached to a separate affidavit describing the character of the document in proper form for filing, captioned "CONFIDENTIAL FINANCIAL STATEMENT" in capital letters. Except as otherwise ordered by the court, the clerk of the court shall keep the document confidential except to the court and subject to disclosure only upon an order of the court.

(Added by Stats.1996, c. 862 (A.B.2751), § 10, operative July 1, 1997. Amended by Stats.1998, c. 581 (A.B.2801), § 22; Stats.2000, c. 565 (A.B.1950), § 9; Stats.2001, c. 232 (A.B.1517), § 1; Stats.2001, c. 563 (A.B.1286), § 6.)

§ 2620.2. Failure to file account; notice; citation; contempt; removal

(a) Whenever the conservator or guardian has failed to file an account as required by Section 2620, the court shall require that written notice be given to the conservator or guardian and the attorney of record for the conservatorship or guardianship directing the conservator or guardian to file an account and to set the account for hearing before the court within 60 days of the date of the notice or, if the conservator or guardian is a public agency, within 120 days of the date of the notice.

(b) Failure to file the account within the time specified in the notice and any additional time allowed by the court under subdivision (a), or within 45 days of actual receipt of the notice, whichever is later, shall constitute a contempt of the authority of the court as described in Section 1209 of the Code of Civil Procedure.

(c) If the conservator or guardian does not file an account and set the account for hearing as required by Section 2620 the court shall do one or more of the following:

(1) Remove the conservator or guardian as provided under Article 1 (commencing with Section 2650) of Chapter 9 of Part 4 of Division 4.

(2) Issue and serve a citation requiring a guardian or conservator who does not file a required account to appear and show cause why the guardian or conservator should not be punished for contempt. If the guardian or conservator purposely evades personal service of the citation, the guardian or conservator shall be removed from office.

(3) Suspend the powers of the conservator or guardian and appoint a temporary conservator or guardian, who shall take possession of the assets of the conservatorship or guardianship, investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interest of the ward or conservatee. Compensation for the temporary conservator or guardian, and counsel for the temporary conservator or guardian, shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of condition of the bond, unless for good cause shown the court finds that the temporary conservator or guardian, and counsel for the temporary conservator or guardian, shall be compensated from the estate.

(4)(A) Appoint legal counsel to represent the ward or conservatee if the court has not suspended the powers of the conservator or guardian and appoint a temporary conservator or guardian pursuant to paragraph (3). Compensation for the counsel appointed for the ward or conservatee shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of a condition on the bond, unless for good cause shown the court finds that counsel for the ward or conservatee shall be compensated according to Section 1470. The court shall order the legal counsel to do one or more of the following:

(i) Investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interest of the ward or conservatee.

(ii) Recommend to the court whether the conservator or guardian should be removed.

(iii) Recommend to the court whether money or other property in the estate should be deposited pursuant to Section 2453, 2453.5, 2454, or 2455 to be subject to withdrawal only upon authorization of the court.

(B) After resolution of the matters for which legal counsel was appointed in subparagraph (A), the court shall terminate the appointment of legal counsel, unless the court determines that continued representation of the ward or conservatee and the estate is necessary and reasonable.

(5) Order that money or property in the estate be deposited pursuant to Section 2453, 2453.5, 2454, or 2455 to be subject to withdrawal only upon authorization of the court.

(6) Grant, upon ex parte application or such notice as the court may require, time to file the account, not to exceed an additional 60 days after the expiration of the deadline described in subdivision (a), where the court finds there is good cause and that the estate is adequately bonded. After expiration of any extensions, if the account has not been filed, the court shall take action as described in paragraphs (1) to (5), inclusive.

(d) Subdivision (c) does not preclude the court from additionally taking any other appropriate action in response to a failure to file a proper accounting in a timely manner.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1991, c. 1019 (S.B.1022), § 6; Stats.1992, c. 572 (S.B.1455), § 7; Stats.2001, c. 359 (S.B.140), § 4; Stats.2002, c. 664 (A.B.3034), § 178.5.)

§ 2621. Notice of hearing

Notice of the hearing on the account of the guardian or conservator shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. If notice is required to be given to the Director of Mental Health or the Director of Developmental Services under Section 1461, the account shall not be

settled or allowed unless notice has been given as provided in Section 1461.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2622. Objections to account

The ward or conservatee, the spouse of the ward or the spouse or domestic partner of the conservatee, any relative or friend of the ward or conservatee, or any creditor or other interested person may file written objections to the account of the guardian or conservator, stating the items of the account to which objection is made and the basis for the objection.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2001, c. 893 (A.B.25), § 40.)

§ 2622.5. Objections or opposition to objections without reasonable cause or in bad faith; payment of costs and expenses; personal liability

(a) If the court determines that the objections were without reasonable cause and in bad faith, the court may order the objector to pay the compensation and costs of the conservator or guardian and other expenses and costs of litigation, including attorney's fees, incurred to defend the account. The objector shall be personally liable to the guardianship or conservatorship estate for the amount ordered.

(b) If the court determines that the opposition to the objections was without reasonable cause and in bad faith, the court may award the objector the costs of the objector and other expenses and costs of litigation, including attorney's fees, incurred to contest the account. The amount awarded is a charge against the compensation of the guardian or conservator, and the guardian or conservator is liable personally and on the bond, if any, for any amount that remains unsatisfied.
(Added by Stats.1996, c. 563 (S.B.392), § 12.)

§ 2623. Compensation and expenses of guardian or conservator

The guardian or conservator shall be allowed all of the following:

(a) The amount of the reasonable expenses incurred in the exercise of the powers and the performance of the duties of the guardian or conservator (including, but not limited to, the cost of any surety bond furnished, reasonable attorney's fees, and such compensation for services rendered by the guardian or conservator of the person as the court determines is just and reasonable).

(b) Such compensation for services rendered by the guardian or conservator as the court determines is just and reasonable.

(c) All reasonable disbursements made before appointment as guardian or conservator.

(d) In the case of termination other than by the death of the ward or conservatee, all reasonable disbursements made after the termination of the guardianship or conservatorship but prior to the discharge of the guardian or conservator by the court.

(e) In the case of termination by the death of the ward or conservatee, all reasonable expenses incurred prior to the discharge of the guardian or conservator by the court for the custody and conservation of the estate and its delivery to the personal representative of the estate of the deceased ward or conservatee or in making other disposition of the estate as provided for by law.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2625. Review of sales, purchases and other transactions

Any sale or purchase of property or other transaction not previously authorized, approved, or confirmed by the court is subject to review by the court upon the next succeeding account of the guardian or conservator occurring after the transaction. Upon such account and review, the court may hold the guardian or conservator liable for any violation of duties in connection with the sale, purchase, or other transaction. Nothing in this section shall be construed to affect the validity of any sale or purchase or other transaction.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2626. Termination of proceeding upon exhaustion of estate

If it appears upon the settlement of any account that the estate has been entirely exhausted through expenditures or disbursements which are approved by the court, the court, upon settlement of the account, shall order the proceeding terminated and the guardian or conservator forthwith discharged unless the court determines that there is reason to continue the proceeding.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2627. Settlement of accounts and release by ward; discharge of guardian

(a) After a ward has reached majority, the ward may settle accounts with the guardian and give the guardian a release which is valid if obtained fairly and without undue influence.

(b) Except as otherwise provided by this code, a guardian is not entitled to a discharge until one year after the ward has attained majority.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2628. Public benefit payments; procedure; conditions

(a) As used in this section, "public benefit payments" means payments received or to be received under either or both of the following:

(1) Part 3 (commencing with Section 11000) of, Part 4 (commencing with Section 16000) of, or Part 5 (commencing with Section 17000) of, Division 9 of the Welfare and Institutions Code.

(2) Subchapter II (commencing with Section 401) of, or Part A of Subchapter XVI (commencing with Section 1382) of, Chapter 7 of Title 42 of the United States Code.

(b) The court may make an order that the guardian or conservator need not present the accounts otherwise required by this chapter so long as all of the following conditions are satisfied:

(1) The estate at the beginning and end of the accounting period for which an account is otherwise required consisted of property, exclusive of the residence of the ward or conservatee, of a total net value of less than seven thousand five hundred dollars ($7,500).

(2) The income of the estate for each month of the accounting period, exclusive of public benefit payments, was less than one thousand dollars ($1,000).

(3) All income of the estate during the accounting period, if not retained, was spent for the benefit of the ward or conservatee.

(c) Notwithstanding that the court has made an order under subdivision (b), the ward or conservatee or any interested person may petition the court for an order requiring the guardian or conservator to present an account as otherwise required by this chapter or the court on its own motion may make that an order. An order under this subdivision may be made ex parte or on such notice of hearing as the court in its discretion requires.

(d) For any accounting period during which all of the conditions of subdivision (b) are not satisfied, the guardian or conservator shall present the account as otherwise required by this chapter.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1991, c. 1019 (S.B.1022), § 7; Stats.1998, c. 103 (S.B.1487), § 1.)

Chapter 9.5 APPOINTMENT OF SUCCESSOR GUARDIAN OR CONSERVATOR

Article 2 APPOINTMENT OF SUCCESSOR CONSERVATOR

§ 2680. Vacancy; appointment of successor

When for any reason a vacancy occurs in the office of conservator, the court may appoint a successor conservator in the manner provided in this article.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2681. Petition; filing; persons or entities authorized

A petition for appointment of a successor conservator may be filed by any of the following:

(a) The conservatee.

(b) The spouse or domestic partner of the conservatee.

(c) A relative of the conservatee.

(d) Any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state.

(e) Any other interested person or friend of the conservatee.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2001, c. 893 (A.B.25), § 43.)

§ 2682. Petition; contents

(a) The petition shall request that a successor conservator be appointed for the person or estate, or both, and shall specify the name and address of the proposed successor conservator and the name and address of the conservatee.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse or domestic partner and of the relatives of the conservatee within the second degree.

(c) If the petition is filed by one other than the conservatee, the petition shall state whether or not the petitioner is a creditor or debtor of the conservatee.

(d) If the conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the conservatee.

(f) The petition shall state whether or not the conservatee will be present at the hearing.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2001, c. 893 (A.B.25), § 44.)

§ 2683. Notice of hearing; time and place; mailing

(a) At least 15 days before the hearing on the petition for appointment of a successor conservator, notice of the time and place of the hearing shall be given as provided in this section. The notice shall be accompanied by a copy of the petition.

(b) Notice shall be mailed to the persons designated in Section 1460 and to the relatives named in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If notice is required by Section 1461.5 to be given to the Veterans Administration, notice shall be mailed as so required.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1994, c. 806 (A.B.3686), § 19.)

§ 2684. Court investigator; duties

Unless the petition states that the conservatee will be present at the hearing, the court investigator shall do all of the following:

(a) Interview the conservatee personally.

(b) Inform the conservatee of the nature of the proceeding to appoint a successor conservator, the name of the person proposed as successor conservator, and the conservatee's right to appear personally at the hearing, to object to the person proposed as successor conservator, to nominate a person to be appointed as successor conservator, to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) Determine whether the conservatee objects to the person proposed as successor conservator or prefers another person to be appointed.

(d) If the conservatee is not represented by legal counsel, determine whether the conservatee wishes to be represented by legal counsel and, if so, determine the name of an attorney the conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel.

(e) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee in any case where the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

(f) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning representation by legal counsel and whether the conservatee objects to the person proposed as successor conservator or prefers that some other person be appointed.

(g) Mail, at least five days before the hearing, a copy of the report referred to in subdivision (f) to all of the following:

(1) The attorney, if any, for the petitioner.

(2) The attorney, if any, for the conservatee.

(3) Such other persons as the court orders.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2685. Presence of conservatee at hearing; duty of court

If the conservatee is present at the hearing, prior to making an order appointing a successor conservator the court shall do all of the following:

(a) Inform the conservatee of the nature and purpose of the proceeding.

(b) Inform the conservatee that the conservatee has the right to object to the person proposed as successor conservator, to nominate a person to be appointed as successor conservator, and, if not represented by legal counsel, to be represented by legal counsel if the conservatee so chooses and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) After the court so informs the conservatee, the court shall consult the conservatee to determine the conservatee's opinion concerning the question of who should be appointed as successor conservator.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2686. Absence of conservatee from hearing; continuance; duties of court investigator

If the petition states that the conservatee will be present at the hearing and the conservatee fails to appear at the hearing, the court shall continue the hearing and direct the court investigator to perform the duties set forth in Section 2684.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2687. Persons authorized to support or oppose petition

The conservatee, the spouse, the domestic partner, or any relative or friend of the conservatee, or any other interested person may appear at the hearing to support or oppose the petition.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2001, c. 893 (A.B.25), § 45.)

§ 2688. Appointment; determination; law governing

(a) The court shall determine the question of who should be appointed as successor conservator according to the provisions of Article 2 (commencing with Section 1810) of Chapter 1 of Part 3.

(b) The order appointing the successor conservator shall contain, among other things, the names, addresses and telephone numbers of the successor conservator, the conservatee's attorney, if any, and the court investigator, if any.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2689. Absentee conservatee; applicable provisions

If the conservatee is an "absentee" as defined in Section 1403:

(a) The petition for appointment of a successor conservator shall contain the matters required by Section 1841 in addition to the matters required by Section 2682.

(b) Notice of the hearing shall be given as provided by Section 1842 in addition to the requirements of Section 2683, except that notice need not be given to the conservatee.

(c) An interview and report by the court investigator is not required.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

Part 5 PUBLIC GUARDIAN

Chapter 2 APPOINTMENT OF PUBLIC GUARDIAN

§ 2920. Application for appointment; court order; notice and hearing

If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interest of the person:

(a) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate.

(b) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2920.5. Submission of fingerprints of, and information regarding, person being investigated as potential conservator; persons or entities authorized to make submissions; types of information

(a)(1) When a court or an agency designated to perform adult protective services refers a conservatee or potential conservatee to a person or entity listed in paragraph (2), that person or entity may submit to the Department of Justice the fingerprints of, and information regarding, a person who is being investigated as a potential conservator. A potential conservatee also may request that fingerprints and information regarding a person being investigated as a potential conservator be submitted to the Department of Justice, if the person being investigated has offered to provide assistance that may make a conservatorship unnecessary. The person or entity listed in paragraph (2) shall inform the potential conservatee of this right. If the potential conservatee requests this background check, the person or entity shall submit the necessary fingerprints and information to the Department of Justice. The Department of Justice shall provide the information described in subdivision (b). Fingerprints taken by the use of live–scan technology may be submitted.

(2) The following persons and entities are authorized to make submissions pursuant to subdivision (a):

(A) A public guardian providing conservatorship services pursuant to this part or Chapter 3 (commencing with Section 5350) of Part 2 of Division 5 of the Welfare and Institutions Code.

(B) An agency designated as a county conservatorship investigator pursuant to Section 5351 of the Welfare and Institutions Code.

(b) Upon a proper request pursuant to the provisions of subdivision (a), the Department of Justice shall provide information to the requesting person or agency regarding the existence and nature of the following:

(1) Every conviction rendered against the subject of the request for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, excepting those offenses for which registration is required pursuant to Section 290 of the Penal Code, the Department of Justice may only provide information on a conviction that occurred within 10 years of the date of the request, or on a conviction that occurred over 10 years after the date of the request, if the subject of the request was incarcerated within 10 years of the date of the request.

(2) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code that the Department of Justice has established is still pending and for which the subject of the request is presently awaiting trial, whether the subject of the request is incarcerated, or has been released on bail or on his or her own recognizance pending trial.

(c) The Department of Justice may not retain fingerprints or related information submitted pursuant to this subdivision to provide subsequent arrest notification pursuant to Section 11105.2 of the Penal Code.

(d) The Department of Justice shall charge a fee sufficient to cover the cost of processing a request for information pursuant to this section. This fee shall be paid by the requesting agency.

(e) Notwithstanding subdivision (a), a private professional conservator who is in compliance with the requirements of Section 2342 in the county conducting the investigation may not be the subject of a background check pursuant to this section.

(f) The criminal records information received by a public guardian shall be kept confidential, except that it may be disclosed under seal to the court and to the attorney for the person for whom a conservatorship is being considered, when the appointment of a conservator as an alternative to the public guardian is being considered by the court. The person or entity described in paragraph (2) of subdivision (a) shall disclose the information provided by the Department of Justice to the subject of the background check. The attorney for the proposed conservatee shall keep any disclosed criminal records information confidential.

(g) The Legislative Analyst's office shall, as part of its analysis of the Budget Bill for the 2006–07 fiscal year, include a sampling of counties, to the extent that data is made available from the persons or entities listed in paragraph (2) of subdivision (a), on the annual number of requests for information that were brought pursuant to this section, and a recommendation as to whether this information helped the public guardian or other person or entity in assessing the competency and trustworthiness of a potential conservator.

(h) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.
(Added by Stats.2002, c. 644 (A.B.1957), § 1.)

Repeal

For repeal of this section, see its terms.

§ 2921. Persons under jurisdiction of department of mental health or department of developmental services; consent to application

An application of the public guardian for guardianship or conservatorship of the person, the estate, or the person and estate, of a person who is under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services may not be granted without the written consent of the department having jurisdiction of the person.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 2922. Letters; bond and oath

If the public guardian is appointed as guardian or conservator:

(a) Letters shall be issued in the same manner and by the same proceedings as letters are issued to other persons. Letters may be issued to "the public guardian" of the county without naming the public guardian.

(b) The official bond and oath of the public guardian are in lieu of the guardian or conservator's bond and oath on the grant of letters.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

Part 6 MANAGEMENT OR DISPOSITION OF COMMUNITY PROPERTY WHERE SPOUSE LACKS LEGAL CAPACITY

Chapter 2 MANAGEMENT, CONTROL, AND DISPOSITION

Article 3 ENFORCEMENT OF SUPPORT OF SPOUSE WHO HAS CONSERVATOR

§ 3080. Petition for order

If one spouse has a conservator and the other spouse has the management or control of community property, the conservator or conservatee, a relative or friend of the conservatee, or any interested person may file a petition under this article in the court in which the conservatorship proceeding is pending for an order requiring the spouse who has the management or control of community property to apply the income or principal, or both, of the community property to the support and maintenance of the conservatee as ordered by the court.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3081. Notice of hearing

(a) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(b) If the spouse who has the management or control of community property is not the conservator, the petitioner shall also cause notice of the hearing and a copy of the petition to be served on that spouse in accordance with Title 5 (commencing with Section 410.10) of Part 2 of the Code of Civil Procedure.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3082. Citation to and examination of spouse managing or controlling community property

Upon the filing of a petition under this article, the court may cite the spouse who has the management or control of community property to appear before the court, and the court and the petitioner may examine the spouse under oath concerning the community property and other matters relevant to the petition filed under this article. If the person so cited refuses to appear and submit to an examination, the court may proceed against the person as provided in Article 2 (commencing with Section 8870) of Chapter 2 of Part 3 of Division 7. Upon such examination, the court may make an order requiring the person cited to disclose his or her knowledge of the community property and other matters relevant to the petition filed under this article, and if the order is not complied with the court may proceed against the person as provided in Article 2 (commencing with Section 8870) of Chapter 2 of Part 3 of Division 7.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3083. Support pendente lite, effect of order; modification or revocation

In any proceeding under this article, the court may, after notice and hearing, order the spouse who has the management or control of community property to pay from the community property such amount as the court determines is necessary to the support and maintenance of the conservatee spouse pending the determination of the petition under this article. An order made pursuant to this section does not prejudice the rights of the spouses or other interested parties with respect to any subsequent order which may be made under this article. Any order made under this section may be modified or revoked at any time except as to any amount that may have accrued prior to the date of filing of the petition to modify or revoke the order.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3084. Current income, expense and property declarations; service and filing; forms

When a petition is filed under this article, the spouse having the management or control of community property shall serve and file a current income and expense declaration and a current property declaration on the forms prescribed by the Judicial Council for use in family law proceedings.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3085. Ex parte protective orders

During the pendency of any proceeding under this article, the court, upon the application of the petitioner, may issue ex parte orders:

(a) Restraining the spouse having the management or control of community property from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi–community, or separate, except in the usual course of business or for the necessities of life.

(b) Requiring the spouse having the management or control of the community property to notify the petitioner of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3086. Continuance; preparation for hearing

Any person interested in the proceeding under this article may request time for filing a response to the petition, for discovery proceedings, or for other preparation for the hearing, and the court shall grant a continuance for a reasonable time for any of such purposes.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3087. Character of property; determination

In a proceeding under this article, the court may hear and determine whether property is community property or the separate property of either spouse if that issue is raised in the proceeding.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3088. Application of income and principal for support and maintenance; circumstances; periodic payments; jurisdiction to modify or vacate; orders

(a) The court may order the spouse who has the management or control of community property to apply the income or principal, or both, of the community property to the support and maintenance of the conservatee, including care, treatment, and support of a conservatee who is a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, as ordered by the court.

(b) In determining the amount ordered for support and maintenance, the court shall consider the following circumstances of the spouses:

(1) The earning capacity and needs of each spouse.

(2) The obligations and assets, including the separate property, of each spouse.

(3) The duration of the marriage.

(4) The age and health of the spouses.

(5) The standard of living of the spouses.

(6) Any other relevant factors which it considers just and equitable.

(c) At the request of any interested person, the court shall make appropriate findings with respect to the circumstances.

(d) The court may order the spouse who has the management or control of community property to make a specified monthly or other periodic payment to the conservator of the person of the conservatee or to any other person designated in the order. The court may order the spouse required to make the periodic payments to give reasonable security therefor.

(e)(1) The court may order the spouse required to make the periodic

payments to assign, to the person designated in the order to receive the payments, that portion of the earnings of the spouse due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support and maintenance of the conservatee. The order operates as an assignment and is binding upon any existing or future employer upon whom a copy of the order is served. The order shall be in the form of an earnings assignment order for support prescribed by the Judicial Council for use in family law proceedings. The employer may deduct the sum of one dollar and fifty cents ($1.50) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any execution or other assignment unless otherwise ordered by the court or unless the other assignment is made pursuant to Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code. No employer shall use any assignment authorized by this subdivision as grounds for the dismissal of that employee.

(2) As used in this subdivision, "employer" includes the United States government and any public entity as defined in Section 811.2 of the Government Code. This subdivision applies to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the extent that those moneys and benefits are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(f) The court retains jurisdiction to modify or to vacate an order made under this section where justice requires, except as to any amount that may have accrued prior to the date of the filing of the petition to modify or revoke the order. At the request of any interested person, the order of modification or revocation shall include findings of fact and may be made retroactive to the date of the filing of the petition to revoke or modify, or to any date subsequent thereto. At least 15 days before the hearing on the petition to modify or vacate the order, the petitioner shall mail a notice of the time and place of the hearing on the petition, accompanied by a copy of the petition, to the spouse who has the management or control of the community property. Notice shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1 to any other persons entitled to notice of the hearing under that chapter.

(g) In a proceeding for dissolution of the marriage or for legal separation, the court has jurisdiction to modify or vacate an order made under this section to the same extent as it may modify or vacate an order made in the proceeding for dissolution of the marriage or for legal separation.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1992, c. 163 (A.B.2641), § 130, operative Jan. 1, 1994; Stats.2004, c. 520 (A.B.2530), § 7.)

§ 3089. Division of community property; transfer of property to conservator of estate; after–acquired property

If the spouse who has the management or control of the community property refuses to comply with any order made under this article or an order made in a separate action to provide support for the conservatee spouse, upon request of the petitioner or other interested person, the court may, in its discretion, divide the community property and the quasi–community property of the spouses, as it exists at the time of division, equally in the same manner as where a marriage is dissolved. If the property is so divided, the property awarded to each spouse is the separate property of that spouse and the court shall order that the property awarded to the conservatee spouse be transferred or paid over to the conservator of the estate of that spouse to be included in the conservatorship estate and be managed, controlled, and disposed of as a part of the conservatorship estate. The fact that property has been divided pursuant to this section has no effect on the nature of property thereafter acquired by the spouses, and the determination whether the thereafter–acquired property is community or separate property shall be made without regard to the fact that property has been divided pursuant to this section.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3090. Enforcement of orders

Any order of the court made under this article may be enforced by the court by execution, the appointment of a receiver, contempt, or by such other order or orders as the court in its discretion may from time to time deem necessary.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3091. Rules for practice and procedure

Notwithstanding any other provision of law, the Judicial Council may provide by rule for the practice and procedure in proceedings under this article.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3092. Use of other procedures for enforcement of support obligation; authority

Nothing in this article affects or limits the right of the conservator or any interested person to institute an action against any person to enforce the duty otherwise imposed by law to support the spouse having a conservator. This article is permissive and in addition to any other procedure otherwise available to enforce the obligation of support.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

Chapter 3 PROCEEDING FOR PARTICULAR TRANSACTION

Article 3 PETITION

§ 3120. Permissible allegations

(a) Several proposed transactions may be included in one petition and proceeding under this chapter.

(b) The petition may contain inconsistent allegations and may request relief in the alternative.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3121. Required contents

The petition shall set forth all of the following information:

(a) The name, age, and residence of each spouse.

(b) If one or both spouses is alleged to lack legal capacity for the proposed transaction, a statement that the spouse has a conservator or a statement of the facts upon which the allegation is based.

(c) If there is a conservator of a spouse, the name and address of the conservator, the county in which the conservatorship proceeding is pending, and the court number of the proceeding.

(d) If a spouse alleged to lack legal capacity for the proposed transaction is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the name and address of the institution.

(e) The names and addresses of all of the following persons:

(1) Relatives within the second degree of each spouse alleged to lack legal capacity for the proposed transaction.

(2) If the petition is to provide gifts or otherwise affect estate planning of the spouse who is alleged to lack capacity, as would be properly the subject of a petition under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 (substituted judgment) in the case of a conservatorship, the names and addresses of the persons identified in Section 2581.

(f) A sufficient description of the property that is the subject of the proposed transaction.

(g) An allegation that the property is community property, and, if the proposed transaction involves property in which a spouse also has a separate property interest, an allegation of good cause to include that separate property in the transaction.

(h) The estimated value of the property.

(i) The terms and conditions of the proposed transaction, including the names of all parties thereto.

(j) The relief requested.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1996, c. 877 (A.B.1467), § 3; Stats.2003, c. 32 (A.B.167), § 3.)

§ 3122. Petition for court order authorizing transaction

If the proceeding is brought for a court order authorizing a proposed transaction, the petition shall set forth, in addition to the information required by Section 3121, all of the following:

(a) An allegation that one of the spouses has a conservator or facts establishing lack of legal capacity of the spouse for the proposed transaction.

(b) An allegation that the other spouse has legal capacity for the proposed transaction or has a conservator.

(c) An allegation that each spouse either: (1) joins in or consents to the proposed transaction, (2) has a conservator, or (3) is substantially unable to manage his or her financial resources or resist fraud or undue influence.

(d) Facts that may be relied upon to show that the authorization sought is for one or more of the following purposes:

(1) The advantage, benefit, or best interests of the spouses or their estates.

(2) The care and support of either spouse or of such persons as either spouse may be legally obligated to support.

(3) The payment of taxes, interest, or other encumbrances or charges for the protection and preservation of the community property.

(4) The providing of gifts for such purposes, and to such charities, relatives (including one of the spouses), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the spouses.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3123. Petition for court order declaring legal capacity for transaction

If the proceeding is brought for a court order declaring that one or both spouses has legal capacity for a proposed transaction, the petition shall set forth, in addition to the information required by Section 3121, an allegation of the legal capacity of such spouse or spouses for the proposed transaction.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

Article 5 HEARING AND ORDER

§ 3140. Representation of spouse alleged to lack legal capacity; appointment of legal counsel

(a) A conservator served pursuant to this article shall, and the Director of Mental Health or the Director of Developmental Services given notice pursuant to Section 1461 may, appear at the hearing and represent a spouse alleged to lack legal capacity for the proposed transaction.

(b) If a spouse alleged to lack legal capacity is not otherwise represented, the court may in its discretion appoint the public guardian, public administrator, or a guardian ad litem to represent the interests of the spouse.

(c) If a spouse alleged to lack legal capacity is unable to retain legal counsel, upon request of the spouse, the court shall appoint the public defender or private counsel under Section 1471 to represent the spouse and, if such appointment is made, Section 1472 applies.

(d) Except as provided in subdivision (c), the court may fix a reasonable fee, to be paid out of the proceeds of the transaction or otherwise as the court may direct, for all services rendered by privately engaged counsel, the public guardian, public administrator, or guardian ad litem, and by counsel for such persons.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3141. Presence of spouse at hearing

(a) If a spouse is alleged to lack legal capacity for the proposed transaction and has no conservator, the spouse shall be produced at the hearing unless unable to attend the hearing.

(b) If the spouse is not able to attend the hearing because of medical inability, such inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the spouse is an adherent of a religion whose tenets and practices call for reliance upon prayer alone for healing and is under treatment by an accredited practitioner of the religion, by the affidavit of the practitioner.

(c) Emotional or psychological instability is not good cause for absence of the spouse from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3142. Information to be given spouse by court

(a) If a spouse is alleged to lack legal capacity for the proposed transaction and has no conservator, the court, before commencement of the hearing on the merits, shall inform the spouse of all of the following:

(1) A determination of lack of legal capacity for the proposed transaction may result in approval of the proposed transaction.

(2) The spouse has the right to legal counsel of the spouse's own choosing, including the right to have legal counsel appointed by the court if unable to retain legal counsel.

(b) This section does not apply if the spouse is absent from the hearing and is not required to attend the hearing under the provisions of subdivision (a) of Section 3141 and any showing required by Section 3141 has been made.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3143. Order declaring legal capacity

(a) If the petition requests that the court make an order declaring a spouse to have legal capacity for the proposed transaction and the court determines that the spouse has legal capacity for the proposed transaction, the court shall so order.

(b) If the petition alleges that a spouse having no conservator lacks legal capacity for the proposed transaction and the court determines that the spouse has legal capacity for the transaction, the court shall make an order so declaring.
(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3144. Order authorizing transaction

(a) The court may authorize the proposed transaction if the court determines all of the following:

(1) The property that is the subject of the proposed transaction is community property of the spouses, and, if the proposed transaction involves property in which a spouse also has a separate property interest, that there is good cause to include that separate property in the transaction.

(2) One of the spouses then has a conservator or otherwise lacks legal capacity for the proposed transaction.

(3) The other spouse either has legal capacity for the proposed transaction or has a conservator.

(4) Each of the spouses either (i) joins in or consents to the proposed transaction, (ii) has a conservator, or (iii) is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Substantial inability may not be proved by isolated incidents of negligence or improvidence.

(5) The proposed transaction is one that should be authorized under this chapter.

(b) If the proposed transaction is to provide gifts or otherwise affect estate planning of the spouse who is alleged to lack capacity, as would be properly the subject of a petition under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 (substituted judgment) in the case of a conservatorship, the court may authorize the transaction under this chapter only if the transaction is one that the court would authorize under that article.

(c) If the court determines under subdivision (a) that the transaction should be authorized, the court shall so order and may authorize the petitioner to do and perform all acts and to execute and deliver all papers, documents, and instruments necessary to effectuate the order.

(d) In an order authorizing a transaction, the court may prescribe any terms and conditions as the court in its discretion determines appropriate, including, but not limited to, requiring joinder or consent of another person.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1996, c. 877 (A.B.1467), § 5; Stats.2003, c. 32 (A.B.167), § 4.)

§ 3145. Effect of determination of lack of legal capacity

A court determination pursuant to this chapter that a spouse lacks legal capacity for the proposed transaction affects the legal capacity of the spouse for that transaction alone and has no effect on the legal capacity of the spouse for any other purpose.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

Part 7 CAPACITY DETERMINATIONS AND HEALTH CARE DECISIONS FOR ADULT WITHOUT CONSERVATOR

§ 3200. Definitions

As used in this part:

(a) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a patient's physical or mental condition.

(b) "Health care decision" means a decision regarding the patient's health care, including the following:

(1) Selection and discharge of health care providers and institutions.

(2) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication.

(3) Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.

(c) "Health care institution" means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

(d) "Patient" means an adult who does not have a conservator of the person and for whom a health care decision needs to be made.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1999, c. 658 (A.B.891), § 15, operative July 1, 2000.)

§ 3201. Petition

(a) A petition may be filed to determine that a patient has the capacity to make a health care decision concerning an existing or continuing condition.

(b) A petition may be filed to determine that a patient lacks the capacity to make a health care decision concerning specified treatment for an existing or continuing condition, and further for an order authorizing a designated person to make a health care decision on behalf of the patient.

(c) One proceeding may be brought under this part under both subdivisions (a) and (b).

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1995, c. 842 (S.B.730), § 9; Stats.1996, c. 178 (S.B.1650), § 9; Stats.1999, c. 658 (A.B.891), § 16, operative July 1, 2000.)

§ 3202. Jurisdiction and venue

The petition may be filed in the superior court of any of the following counties:

(a) The county in which the patient resides.

(b) The county in which the patient is temporarily living.

(c) Such other county as may be in the best interests of the patient.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3203. Persons authorized to file petition

A petition may be filed by any of the following:

(a) The patient.

(b) The patient's spouse.

(c) A relative or friend of the patient, or other interested person, including the patient's agent under a power of attorney for health care.

(d) The patient's physician.

(e) A person acting on behalf of the health care institution in which the patient is located if the patient is in a health care institution.

(f) The public guardian or other county officer designated by the board of supervisors of the county in which the patient is located or resides or is temporarily living.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1999, c. 658 (A.B.891), § 17, operative July 1, 2000.)

§ 3204. Contents of petition

The petition shall state, or set forth by a medical declaration attached to the petition, all of the following known to the petitioner at the time the petition is filed:

(a) The condition of the patient's health that requires treatment.

(b) The recommended health care that is considered to be medically appropriate.

(c) The threat to the patient's condition if authorization for the recommended health care is delayed or denied by the court.

(d) The predictable or probable outcome of the recommended health care.

(e) The medically available alternatives, if any, to the recommended health care.

(f) The efforts made to obtain consent from the patient.

(g) If the petition is filed by a person on behalf of a health care institution, the name of the person to be designated to give consent to the recommended health care on behalf of the patient.

(h) The deficit or deficits in the patient's mental functions listed in subdivision (a) of Section 811 that are impaired, and an identification of a link between the deficit or deficits and the patient's inability to respond knowingly and intelligently to queries about the recommended health care or inability to participate in a decision about the recommended health care by means of a rational thought process.

(i) The names and addresses, so far as they are known to the petitioner, of the persons specified in subdivision (b) of Section 1821.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1995, c. 842 (S.B.730), § 10; Stats.1996, c. 178 (S.B.1650), § 10; Stats.1996, c. 563 (S.B.392), § 15; Stats.1999, c. 658 (A.B.891), § 18, operative July 1, 2000.)

§ 3205. Appointment of legal counsel

Upon the filing of the petition, the court shall determine the name of the attorney the patient has retained to represent the patient in the proceeding under this part or the name of the attorney the patient plans to retain for that purpose. If the patient has not retained an attorney and does not plan to retain one, the court shall appoint the public defender or private counsel under Section 1471 to consult with and represent the patient at the hearing on the petition and, if such appointment is made, Section 1472 applies.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3206. Notice of hearing and copy of petition; service; exceptions; considerations by court

(a) Not less than 15 days before the hearing, notice of the time and place of the hearing and a copy of the petition shall be personally served on the patient, the patient's attorney, and the agent under the patient's power of attorney for health care, if any.

(b) Not less than 15 days before the hearing, notice of the time and place of the hearing and a copy of the petition shall be mailed to the following persons:

(1) The patient's spouse, if any, at the address stated in the petition.

(2) The patient's relatives named in the petition at their addresses stated in the petition.

(c) For good cause, the court may shorten or waive notice of the

hearing as provided by this section. In determining the period of notice to be required, the court shall take into account both of the following:

(1) The existing medical facts and circumstances set forth in the petition or in a medical declaration attached to the petition or in a medical declaration presented to the court.

(2) The desirability, where the condition of the patient permits, of giving adequate notice to all interested persons.

(Added by Stats.1996, c. 563 (S.B.392), § 17. Amended by Stats.1999, c. 658 (A.B.891), § 19, operative July 1, 2000.)

§ 3207. Submission for determination on medical declarations

Notwithstanding Section 3206, the matter presented by the petition may be submitted for the determination of the court upon proper and sufficient medical declarations if the attorney for the petitioner and the attorney for the patient so stipulate and further stipulate that there remains no issue of fact to be determined.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1999, c. 658 (A.B.891), § 20, operative July 1, 2000.)

§ 3208. Order authorizing health care

(a) Except as provided in subdivision (b), the court may make an order authorizing the recommended health care for the patient and designating a person to give consent to the recommended health care on behalf of the patient if the court determines from the evidence all of the following:

(1) The existing or continuing condition of the patient's health requires the recommended health care.

(2) If untreated, there is a probability that the condition will become life–endangering or result in a serious threat to the physical or mental health of the patient.

(3) The patient is unable to consent to the recommended health care.

(b) In determining whether the patient's mental functioning is so severely impaired that the patient lacks the capacity to make any health care decision, the court may take into consideration the frequency, severity, and duration of periods of impairment.

(c) The court may make an order authorizing withholding or withdrawing artificial nutrition and hydration and all other forms of health care and designating a person to give or withhold consent to the recommended health care on behalf of the patient if the court determines from the evidence all of the following:

(1) The recommended health care is in accordance with the patient's best interest, taking into consideration the patient's personal values to the extent known to the petitioner.

(2) The patient is unable to consent to the recommended health care.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1990, c. 710 (S.B.1775), § 12, operative July 1, 1991; Stats.1995, c. 842 (S.B.730), § 11; Stats.1999, c. 658 (A.B.891), § 21, operative July 1, 2000.)

§ 3208.5. Patient with capacity to consent; court findings and orders

In a proceeding under this part:

(a) Where the patient has the capacity to consent to the recommended health care, the court shall so find in its order.

(b) Where the court has determined that the patient has the capacity to consent to the recommended health care, the court shall, if requested, determine whether the patient has accepted or refused the recommended health care, and whether the patient's consent to the recommended health care is an informed consent.

(c) Where the court finds that the patient has the capacity to consent to the recommended health care, but that the patient refuses consent, the court shall not make an order authorizing the recommended health care or designating a person to give consent to the recommended health care. If an order has been made authorizing the recommended health care and designating a person to give consent to the recommended health care, the order shall be revoked if the court determines that the patient has recovered the capacity to consent to the recommended health care. Until revoked or modified, the order is effective authorization for the recommended health care.

(Added by Stats.1999, c. 658 (A.B.891), § 22, operative July 1, 2000.)

§ 3209. Continuing jurisdiction of court

The court in which the petition is filed has continuing jurisdiction to revoke or modify an order made under this part upon a petition filed, noticed, and heard in the same manner as an original petition filed under this part.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 3210. Procedure supplemental and alternative

(a) This part is supplemental and alternative to other procedures or methods for obtaining consent to health care or making health care decisions, and is permissive and cumulative for the relief to which it applies.

(b) Nothing in this part limits the providing of health care in an emergency case in which the health care is required because (1) the health care is required for the alleviation of severe pain or (2) the patient has a medical condition that, if not immediately diagnosed and treated, will lead to serious disability or death.

(c) Nothing in this part supersedes the right that any person may have under existing law to make health care decisions on behalf of a patient, or affects the decisionmaking process of a health care institution.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1999, c. 658 (A.B.891), § 23, operative July 1, 2000.)

§ 3211. Prohibition against placement in mental health treatment facility; restrictions on treatment

(a) No person may be placed in a mental health treatment facility under the provisions of this part.

(b) No experimental drug as defined in Section 111515 of the Health and Safety Code may be prescribed for or administered to any person under this part.

(c) No convulsive treatment as defined in Section 5325 of the Welfare and Institutions Code may be performed on any person under this part.

(d) No person may be sterilized under this part.

(e) The provisions of this part are subject to a valid advance health care directive under the Health Care Decisions Law, Division 4.7 (commencing with Section 4600).

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1996, c. 1023 (S.B.1497), § 399, eff. Sept. 29, 1996; Stats.1999, c. 658 (A.B.891), § 24, operative July 1, 2000.)

§ 3212. Treatment by spiritual means

Nothing in this part shall be construed to supersede or impair the right of any individual to choose treatment by spiritual means in lieu of medical treatment, nor shall any individual choosing treatment by spiritual means, in accordance with the tenets and practices of that individual's established religious tradition, be required to submit to medical testing of any kind pursuant to a determination of capacity.

(Added by Stats.1999, c. 658 (A.B.891), § 25, operative July 1, 2000.)

Part 8 OTHER PROTECTIVE PROCEEDINGS

Chapter 4 MONEY OR PROPERTY PAID OR DELIVERED PURSUANT TO COMPROMISE OR JUDGMENT FOR MINOR OR INCOMPETENT PERSON

APPLICATION

For application of this chapter, see Probate Code § 3600.

Article 1 GENERAL PROVISIONS

§ 3600. Application of chapter

This chapter applies whenever both of the following conditions exist:

(a) A court (1) approves a compromise of, or the execution of a covenant not to sue on or a covenant not to enforce judgment on, a minor's disputed claim, (2) approves a compromise of a pending action or proceeding to which a minor or person with a disability is a party, or (3) gives judgment for a minor or person with a disability.

(b) The compromise, covenant, or judgment provides for the payment or delivery of money or other property for the benefit of the minor or person with a disability.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2004, c. 67 (A.B.1851), § 3.)

§ 3601. Order directing payment of expenses, costs and fees

(a) The court making the order or giving the judgment referred to in Section 3600, as a part thereof, shall make a further order authorizing and directing that reasonable expenses, medical or otherwise and including reimbursement to a parent, guardian, or conservator, costs, and attorney's fees, as the court shall approve and allow therein, shall be paid from the money or other property to be paid or delivered for the benefit of the minor or person with a disability.

(b) The order required by subdivision (a) may be directed to the following:

(1) A parent of the minor, the guardian ad litem, or the guardian of the estate of the minor or the conservator of the estate of the person with a disability.

(2) The payer of any money to be paid pursuant to the compromise, covenant, or judgment for the benefit of the minor or person with a disability.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2004, c. 67 (A.B.1851), § 4.)

§ 3602. Disposition of remaining balance

(a) If there is no guardianship of the estate of the minor or conservatorship of the estate of the person with a disability, the remaining balance of the money and other property, after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601, shall be paid, delivered, deposited, or invested as provided in Article 2 (commencing with Section 3610).

(b) Except as provided in subdivisions (c) and (d), if there is a guardianship of the estate of the minor or conservatorship of the estate of the person with a disability, the remaining balance of the money and other property, after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601, shall be paid or delivered to the guardian or conservator of the estate. Upon application of the guardian or conservator, the court making the order or giving the judgment referred to in Section 3600 or the court in which the guardianship or conservatorship proceeding is pending may, with or without notice, make an order that all or part of the money paid or to be paid to the guardian or conservator under this subdivision be deposited or invested as provided in Section 2456.

(c) Upon ex parte petition of the guardian or conservator or upon petition of any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may for good cause shown order one or more of the following:

(1) That all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be deposited in an insured account in a financial institution in this state, or in a single–premium deferred annuity, subject to withdrawal only upon authorization of the court.

(2) If there is a guardianship of the estate of the minor, that all or part of the remaining balance of money and other property not become a part of the guardianship estate and instead be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(3) That all or part of the remaining balance of money and other property not become a part of the guardianship estate and, instead, be transferred to the trustee of a trust which is either created by, or approved of, in the order or judgment described in Section 3600. This trust shall be revocable by the minor upon attaining 18 years of age, and shall contain other terms and conditions, including, but not limited to, terms and conditions concerning trustee's accounts and trustee's bond, as the court determines to be necessary to protect the minor's interests.

(d) Upon petition of the guardian, conservator, or any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may order that all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be paid to a special needs trust established under Section 3604 for the benefit of the minor or person with a disability.

(e) If the petition is by a person other than the guardian or conservator, notice of hearing on a petition under subdivision (c) shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(f) Notice of the time and place of hearing on a petition under subdivision (d), and a copy of the petition, shall be mailed to the State Director of Health Services, the Director of Mental Health, and the Director of Developmental Services at the office of each director in Sacramento at least 15 days before the hearing.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1992, c. 355 (A.B.3328), § 2; Stats.1996, c. 563 (S.B.392), § 18; Stats.2004, c. 67 (A.B.1851), § 5.)

§ 3603. Reference to "person with a disability"

Where reference is made in this chapter to a "person with a disability," the reference shall be deemed to include the following:

(a) A person for whom a conservator may be appointed.

(b) Any of the following persons, subject to the provisions of Section 3613:

(1) A person who meets the definition of disability as defined in Section 1382c(a)(3) of Title 42 of the United States Code, or as defined in Section 416(i)(1) of Title II of the federal Social Security Act (42 U.S.C. Sec. 401 et seq.) and regulations implementing that act, as set forth in Part 416.905 of Title 20 of the Federal Code of Regulations.

(2) A person who meets the definition of disability as defined in paragraphs (1), (2), and (3) of subsection (d) of Section 423 of Title II of the federal Social Security Act (42 U.S.C. Sec. 401 et seq.) and regulations implementing that act, as set forth in Part 404.1505 of Title 20 of the Federal Code of Regulations.

(3) A minor who meets the definition of disability, as set forth in Part 416.906 of Title 20 of the Federal Code of Regulations.

(4) A person with a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2004, c. 67 (A.B.1851), § 6.)

§ 3604. Payment to special needs trust; petition for order; trust requirements; jurisdiction of court; court orders

(a)(1) If a court makes an order under Section 3602 or 3611 that money of a minor or person with a disability be paid to a special needs trust, the terms of the trust shall be reviewed and approved by the court and shall satisfy the requirements of this section. The trust is subject to continuing jurisdiction of the court, and is subject to court supervision to the extent determined by the court. The court may transfer jurisdiction to the court in the proper county for commencement of a proceeding as determined under Section 17005.

(2) If the court referred to in subdivision (a) could have made an

order under Section 3602 or 3611 to place that money into a special needs trust, but that order was not requested, a parent, guardian, conservator, or other interested person may petition a court that exercises jurisdiction pursuant to Section 800 for that order. In doing so, notice shall be provided pursuant to subdivisions (e) and (f) of Section 3602, or subdivision (c) of Section 3611, and that notice shall be given at least 15 days before the hearing.

(b) A special needs trust may be established and continued under this section only if the court determines all of the following:

(1) That the minor or person with a disability has a disability that substantially impairs the individual's ability to provide for the individual's own care or custody and constitutes a substantial handicap.

(2) That the minor or person with a disability is likely to have special needs that will not be met without the trust.

(3) That money to be paid to the trust does not exceed the amount that appears reasonably necessary to meet the special needs of the minor or person with a disability.

(c) If at any time it appears (1) that any of the requirements of subdivision (b) are not satisfied or the trustee refuses without good cause to make payments from the trust for the special needs of the beneficiary, and (2) that the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, or a county or city and county in this state has a claim against trust property, that department, county, or city and county may petition the court for an order terminating the trust.

(d) A court order under Section 3602 or 3611 for payment of money to a special needs trust shall include a provision that all statutory liens in favor of the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, and any county or city and county in this state shall first be satisfied.

(Added by Stats.1992, c. 355 (A.B.3328), § 3. Amended by Stats.2004, c. 67 (A.B.1851), § 7.)

§ 3605. Statutes of limitation; death of beneficiary; notice of death; payment of claims; application of section

(a) This section applies only to a special needs trust established under Section 3604 on or after January 1, 1993.

(b) While the special needs trust is in existence, the statute of limitations otherwise applicable to claims of the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, and any county or city and county in this state is tolled. Notwithstanding any provision in the trust instrument, at the death of the special needs trust beneficiary or on termination of the trust, the trust property is subject to claims of the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, and any county or city and county in this state to the extent authorized by law as if the trust property is owned by the beneficiary or is part of the beneficiary's estate.

(c) At the death of the special needs trust beneficiary or on termination of the trust, the trustee shall give notice of the beneficiary's death or the trust termination, in the manner provided in Section 1215, to all of the following:

(1) The State Department of Health Services, the State Department of Mental Health, and the State Department of Developmental Services, addressed to the director of that department at the Sacramento office of the director.

(2) Any county or city and county in this state that has made a written request to the trustee for notice, addressed to that county or city and county at the address specified in the request.

(d) Failure to give the notice required by subdivision (c) prevents the running of the statute of limitations against the claim of the department, county, or city and county not given the notice.

(e) The department, county, or city and county has four months after notice is given in which to make a claim with the trustee. If the trustee rejects the claim, the department, county, or city and county making the claim may petition the court for an order under Chapter 3 (commencing with Section 17200) of Part 5 of Division 9, directing the trustee to pay the claim. A claim made under this subdivision shall be paid as a preferred claim prior to any other distribution. If trust property is insufficient to pay all claims under this subdivision, the trustee shall petition the court for instructions and the claims shall be paid from trust property as the court deems just.

(f) If trust property is distributed before expiration of four months after notice is given without payment of the claim, the department, county, or city and county has a claim against the distributees to the full extent of the claim, or each distributee's share of trust property, whichever is less. The claim against distributees includes interest at a rate equal to that earned in the Pooled Money Investment Account, Article 4.5 (commencing with Section 16480) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, from the date of distribution or the date of filing the claim, whichever is later, plus other accruing costs as in the case of enforcement of a money judgment.

(Added by Stats.1992, c. 355 (A.B.3328), § 4.)

Article 2 DISPOSITION OF MONEY OR OTHER PROPERTY WHERE NO GUARDIANSHIP OR CONSERVATORSHIP

Application

For application of this chapter, see Probate Code § 3600.

§ 3610. Disposition of remaining balance

When money or other property is to be paid or delivered for the benefit of a minor or person with a disability under a compromise, covenant, order or judgment, and there is no guardianship of the estate of the minor or conservatorship of the estate of the person with a disability, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid, delivered, deposited, or invested as provided in this article.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2004, c. 67 (A.B.1851), § 8.)

§ 3611. Order of court

In any case described in Section 3610, the court making the order or giving the judgment referred to in Section 3600 shall, upon application of counsel for the minor or person with a disability, order any one or more of the following:

(a) That a guardian of the estate or conservator of the estate be appointed and that the remaining balance of the money and other property be paid or delivered to the person so appointed.

(b) That the remaining balance of any money paid or to be paid be deposited in an insured account in a financial institution in this state, or in a single–premium deferred annuity, subject to withdrawal only upon the authorization of the court, and that the remaining balance of any other property delivered or to be delivered be held on conditions the court determines to be in the best interest of the minor or person with a disability.

(c) After a hearing by the court, that the remaining balance of any money and other property be paid to a special needs trust established under Section 3604 for the benefit of the minor or person with a disability. Notice of the time and place of the hearing and a copy of the petition shall be mailed to the State Director of Health Services, the Director of Mental Health, and the Director of Developmental Services at the office of each director in Sacramento at least 15 days before the hearing.

(d) If the remaining balance of the money to be paid or delivered does not exceed twenty thousand dollars ($20,000), that all or any part of the money be held on any other conditions the court in its discretion determines to be in the best interest of the minor or person with a disability.

(e) If the remaining balance of the money and other property to be

paid or delivered does not exceed five thousand dollars ($5,000) in value and is to be paid or delivered for the benefit of a minor, that all or any part of the money and the other property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400) of Chapter 2.

(f) If the remaining balance of the money and other property to be paid or delivered is to be paid or delivered for the benefit of the minor, that all or any part of the money and other property be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(g) That the remaining balance of the money and other property be paid or delivered to the trustee of a trust which is created by, or approved of, in the order or judgment referred to in Section 3600. This trust shall be revocable by the minor upon attaining the age of 18 years, and shall contain other terms and conditions, including, but not limited to, terms and conditions concerning trustee's accounts and trustee's bond, as the court determines to be necessary to protect the minor's interests.

(h) That the remaining balance of any money paid or to be paid be deposited with the county treasurer, if all of the following conditions are met:

(1) The county treasurer has been authorized by the county board of supervisors to handle the deposits.

(2) The county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code.

(3) The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money.

(4) The county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor.

(5) Funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4.

(i) That the remaining balance of the money and other property be paid or delivered to the person with a disability.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1991, c. 413 (A.B.934), § 3; Stats.1992, c. 355 (A.B.3328), § 5; Stats.1993, c. 978 (S.B.305), § 4; Stats.1996, c. 563 (S.B.392), § 19; Stats.2004, c. 67 (A.B.1851), § 9.)

§ 3612. Continuing jurisdiction until minor reaches majority; continuing jurisdiction over trust of person with a disability who reaches majority

(a) Notwithstanding any other provision of law and except to the extent the court orders otherwise, the court making the order under Section 3611 shall have continuing jurisdiction of the money and other property paid, delivered, deposited, or invested under this article until the minor reaches 18 years of age.

(b) Notwithstanding subdivision (a), the trust of an individual who meets the definition of a person with a disability under paragraph (3) of subdivision (b) of Section 3603 and who reaches 18 years of age, shall continue and be under continuing court jurisdiction until terminated by the court.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2004, c. 67 (A.B.1851), § 10.)

§ 3613. Orders or judgments with respect to adults who have capacity to consent

Notwithstanding any other provision of this chapter, a court may not make an order or give a judgment pursuant to Section 3600, 3601, 3602, 3610, or 3611 with respect to an adult who has the capacity within the meaning of Section 812 to consent to the order and who has no conservator of the estate with authority to make that decision, without the express consent of that person.

(Added by Stats.2004, c. 67 (A.B.1851), § 11.)

PROBATE CODE — HEALTH CARE DECISIONS

Division 4.7 HEALTH CARE DECISIONS

Part 1 DEFINITIONS AND GENERAL

Chapter 1 SHORT TITLE AND DEFINITIONS

§ 4600. Short title

This division may be cited as the Health Care Decisions Law.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4603. Definitions governing construction of this division

Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this division.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4605. Advance health care directive

"Advance health care directive" or "advance directive" means either an individual health care instruction or a power of attorney for health care.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4607. Agent

(a) "Agent" means an individual designated in a power of attorney for health care to make a health care decision for the principal, regardless of whether the person is known as an agent or attorney–in–fact, or by some other term.

(b) "Agent" includes a successor or alternate agent.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4609. Capacity

"Capacity" means a person's ability to understand the nature and consequences of a decision and to make and communicate a decision, and includes in the case of proposed health care, the ability to understand its significant benefits, risks, and alternatives.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000. Amended by Stats.2001, c. 230 (A.B.1278), § 3.)

§ 4611. Community care facility

"Community care facility" means a "community care facility" as defined in Section 1502 of the Health and Safety Code.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4613. Conservator

"Conservator" means a court–appointed conservator having authority to make a health care decision for a patient.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4615. Health care

"Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a patient's physical or mental condition.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4617. Health care decision

"Health care decision" means a decision made by a patient or the patient's agent, conservator, or surrogate, regarding the patient's health care, including the following:

(a) Selection and discharge of health care providers and institutions.

(b) Approval or disapproval of diagnostic tests, surgical procedures, and programs of medication.

(c) Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4619. Health care institution

"Health care institution" means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4621. Health care provider

"Health care provider" means an individual licensed, certified, or otherwise authorized or permitted by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4623. Individual health care instruction

"Individual health care instruction" or "individual instruction" means a patient's written or oral direction concerning a health care decision for the patient.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4625. Patient

"Patient" means an adult whose health care is under consideration, and includes a principal under a power of attorney for health care and an adult who has given an individual health care instruction or designated a surrogate.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4627. Physician

"Physician" means a physician and surgeon licensed by the Medical Board of California or the Osteopathic Medical Board of California.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4629. Power of attorney for health care

"Power of attorney for health care" means a written instrument designating an agent to make health care decisions for the principal.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4631. Primary physician

"Primary physician" means a physician designated by a patient or the patient's agent, conservator, or surrogate, to have primary responsibility for the patient's health care or, in the absence of a designation or if the designated physician is not reasonably available or declines to act as primary physician, a physician who undertakes the responsibility.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4633. Principal

"Principal" means an adult who executes a power of attorney for health care.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4635. Reasonably available

"Reasonably available" means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4637. Residential care facility for the elderly

"Residential care facility for the elderly" means a "residential care facility for the elderly" as defined in Section 1569.2 of the Health and Safety Code.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4639. Skilled nursing facility

"Skilled nursing facility" means a "skilled nursing facility" as defined in Section 1250 of the Health and Safety Code.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4641. Supervising health care provider

"Supervising health care provider" means the primary physician or, if there is no primary physician or the primary physician is not reasonably available, the health care provider who has undertaken primary responsibility for a patient's health care.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4643. Surrogate

"Surrogate" means an adult, other than a patient's agent or conservator, authorized under this division to make a health care decision for the patient.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

Chapter 2 GENERAL PROVISIONS

§ 4650. Legislative findings

The Legislature finds the following:

(a) In recognition of the dignity and privacy a person has a right to expect, the law recognizes that an adult has the fundamental right to control the decisions relating to his or her own health care, including the decision to have life–sustaining treatment withheld or withdrawn.

(b) Modern medical technology has made possible the artificial prolongation of human life beyond natural limits. In the interest of protecting individual autonomy, this prolongation of the process of dying for a person for whom continued health care does not improve the prognosis for recovery may violate patient dignity and cause unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the person.

(c) In the absence of controversy, a court is normally not the proper forum in which to make health care decisions, including decisions regarding life–sustaining treatment.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4651. Application; exemptions

(a) Except as otherwise provided, this division applies to health care decisions for adults who lack capacity to make health care decisions for themselves.

(b) This division does not affect any of the following:

(1) The right of an individual to make health care decisions while having the capacity to do so.

(2) The law governing health care in an emergency.

(3) The law governing health care for unemancipated minors.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4652. Scope

This division does not authorize consent to any of the following on behalf of a patient:

(a) Commitment to or placement in a mental health treatment facility.

(b) Convulsive treatment (as defined in Section 5325 of the Welfare and Institutions Code).

(c) Psychosurgery (as defined in Section 5325 of the Welfare and Institutions Code).

(d) Sterilization.
(e) Abortion.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4653. Mercy killing, assisted suicide, or euthanasia

Nothing in this division shall be construed to condone, authorize, or approve mercy killing, assisted suicide, or euthanasia. This division is not intended to permit any affirmative or deliberate act or omission to end life other than withholding or withdrawing health care pursuant to an advance health care directive, by a surrogate, or as otherwise provided, so as to permit the natural process of dying.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4654. Health care contrary to generally accepted health care standards

This division does not authorize or require a health care provider or health care institution to provide health care contrary to generally accepted health care standards applicable to the health care provider or health care institution.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4655. Intention of patient

(a) This division does not create a presumption concerning the intention of a patient who has not made or who has revoked an advance health care directive.

(b) In making health care decisions under this division, a patient's attempted suicide shall not be construed to indicate a desire of the patient that health care be restricted or inhibited.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4656. Effect of death resulting from withholding or withdrawing health care

Death resulting from withholding or withdrawing health care in accordance with this division does not for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity to the contrary.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4657. Presumption of capacity

A patient is presumed to have the capacity to make a health care decision, to give or revoke an advance health care directive, and to designate or disqualify a surrogate. This presumption is a presumption affecting the burden of proof.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4658. Determination regarding patient's capacity to be made by primary physician

Unless otherwise specified in a written advance health care directive, for the purposes of this division, a determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual health care instruction or the authority of an agent or surrogate, shall be made by the primary physician.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4659. Persons excluded from making decisions under this division

(a) Except as provided in subdivision (b), none of the following persons may make health care decisions as an agent under a power of attorney for health care or a surrogate under this division:

(1) The supervising health care provider or an employee of the health care institution where the patient is receiving care.

(2) An operator or employee of a community care facility or residential care facility where the patient is receiving care.

(b) The prohibition in subdivision (a) does not apply to the following persons:

(1) An employee, other than the supervising health care provider, who is related to the patient by blood, marriage, or adoption, or is a registered domestic partner of the patient.

(2) An employee, other than the supervising health care provider, who is employed by the same health care institution, community care facility, or residential care facility for the elderly as the patient.

(c) A conservator under the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) may not be designated as an agent or surrogate to make health care decisions by the conservatee, unless all of the following are satisfied:

(1) The advance health care directive is otherwise valid.

(2) The conservatee is represented by legal counsel.

(3) The lawyer representing the conservatee signs a certificate stating in substance:

"I am a lawyer authorized to practice law in the state where this advance health care directive was executed, and the principal or patient was my client at the time this advance directive was executed. I have advised my client concerning his or her rights in connection with this advance directive and the applicable law and the consequences of signing or not signing this advance directive, and my client, after being so advised, has executed this advance directive."
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000. Amended by Stats.2001, c. 230 (A.B.1278), § 4.)

§ 4660. Copy of directive; effect

A copy of a written advance health care directive, revocation of an advance directive, or designation or disqualification of a surrogate has the same effect as the original.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

Chapter 3 TRANSITIONAL PROVISIONS

§ 4665. Application of division

Except as otherwise provided by statute:

(a) On and after July 1, 2000, this division applies to all advance health care directives, including, but not limited to, durable powers of attorney for health care and declarations under the Natural Death Act (former Chapter 3.9 (commencing with Section 7185) of Part 1 of Division 7 of the Health and Safety Code), regardless of whether they were given or executed before, on, or after July 1, 2000.

(b) This division applies to all proceedings concerning advance health care directives commenced on or after July 1, 2000.

(c) This division applies to all proceedings concerning written advance health care directives commenced before July 1, 2000, unless the court determines that application of a particular provision of this division would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of this division does not apply and prior law applies.

(d) Nothing in this division affects the validity of an advance health care directive executed before July 1, 2000, that was valid under prior law.

(e) Nothing in this division affects the validity of a durable power of attorney for health care executed on a printed form that was valid under prior law, regardless of whether execution occurred before, on, or after July 1, 2000.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

Part 2 UNIFORM HEALTH CARE DECISIONS ACT

Chapter 1 ADVANCE HEALTH CARE DIRECTIVES

Article 1 GENERAL PROVISIONS

§ 4670. Persons entitled to give individual health care instruction; method; conditions

An adult having capacity may give an individual health care instruction. The individual instruction may be oral or written. The individual instruction may be limited to take effect only if a specified condition arises.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4671. Persons entitled to execute power of attorney for health care; scope authority granted

(a) An adult having capacity may execute a power of attorney for health care, as provided in Article 2 (commencing with Section 4680). The power of attorney for health care may authorize the agent to make health care decisions and may also include individual health care instructions.

(b) The principal in a power of attorney for health care may grant authority to make decisions relating to the personal care of the principal, including, but not limited to, determining where the principal will live, providing meals, hiring household employees, providing transportation, handling mail, and arranging recreation and entertainment.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4672. Nomination of conservator

(a) A written advance health care directive may include the individual's nomination of a conservator of the person or estate or both, or a guardian of the person or estate or both, for consideration by the court if protective proceedings for the individual's person or estate are thereafter commenced.

(b) If the protective proceedings are conservatorship proceedings in this state, the nomination has the effect provided in Section 1810 and the court shall give effect to the most recent writing executed in accordance with Section 1810, whether or not the writing is a written advance health care directive.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4673. Sufficiency of directive

A written advance health care directive is legally sufficient if all of the following requirements are satisfied:

(a) The advance directive contains the date of its execution.

(b) The advance directive is signed either (1) by the patient or (2) in the patient's name by another adult in the patient's presence and at the patient's direction.

(c) The advance directive is either (1) acknowledged before a notary public or (2) signed by at least two witnesses who satisfy the requirements of Sections 4674 and 4675.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4674. Requirements

If the written advance health care directive is signed by witnesses, as provided in Section 4673, the following requirements shall be satisfied:

(a) The witnesses shall be adults.

(b) Each witness signing the advance directive shall witness either the signing of the advance directive by the patient or the patient's acknowledgment of the signature or the advance directive.

(c) None of the following persons may act as a witness:

(1) The patient's health care provider or an employee of the patient's health care provider.

(2) The operator or an employee of a community care facility.

(3) The operator or an employee of a residential care facility for the elderly.

(4) The agent, where the advance directive is a power of attorney for health care.

(d) Each witness shall make the following declaration in substance:

"I declare under penalty of perjury under the laws of California (1) that the individual who signed or acknowledged this advance health care directive is personally known to me, or that the individual's identity was proven to me by convincing evidence, (2) that the individual signed or acknowledged this advance directive in my presence, (3) that the individual appears to be of sound mind and under no duress, fraud, or undue influence, (4) that I am not a person appointed as agent by this advance directive, and (5) that I am not the individual's health care provider, an employee of the individual's health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly."

(e) At least one of the witnesses shall be an individual who is neither related to the patient by blood, marriage, or adoption, nor entitled to any portion of the patient's estate upon the patient's death under a will existing when the advance directive is executed or by operation of law then existing.

(f) The witness satisfying the requirement of subdivision (e) shall also sign the following declaration in substance:

"I further declare under penalty of perjury under the laws of California that I am not related to the individual executing this advance health care directive by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the individual's estate upon his or her death under a will now existing or by operation of law."

(g) The provisions of this section applicable to witnesses do not apply to a notary public before whom an advance health care directive is acknowledged.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4675. Patients in skilled nursing facilities; witnesses

(a) If an individual is a patient in a skilled nursing facility when a written advance health care directive is executed, the advance directive is not effective unless a patient advocate or ombudsman, as may be designated by the Department of Aging for this purpose pursuant to any other applicable provision of law, signs the advance directive as a witness, either as one of two witnesses or in addition to notarization. The patient advocate or ombudsman shall declare that he or she is serving as a witness as required by this subdivision. It is the intent of this subdivision to recognize that some patients in skilled nursing facilities are insulated from a voluntary decisionmaking role, by virtue of the custodial nature of their care, so as to require special assurance that they are capable of willfully and voluntarily executing an advance directive.

(b) A witness who is a patient advocate or ombudsman may rely on the representations of the administrators or staff of the skilled nursing facility, or of family members, as convincing evidence of the identity of the patient if the patient advocate or ombudsman believes that the representations provide a reasonable basis for determining the identity of the patient.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4676. Instruments from another state or jurisdiction; validity

(a) A written advance health care directive or similar instrument executed in another state or jurisdiction in compliance with the laws of that state or jurisdiction or of this state, is valid and enforceable in this state to the same extent as a written advance directive validly executed in this state.

(b) In the absence of knowledge to the contrary, a physician or other health care provider may presume that a written advance health care directive or similar instrument, whether executed in another state or jurisdiction or in this state, is valid.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4677. Requiring execution or revocation of directive as condition for providing health care

A health care provider, health care service plan, health care institution, disability insurer, self–insured employee welfare plan, or nonprofit hospital plan or a similar insurance plan may not require or prohibit the execution or revocation of an advance health care directive as a condition for providing health care, admission to a facility, or furnishing insurance.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4678. Examination and disclosure of medical information

Unless otherwise specified in an advance health care directive, a person then authorized to make health care decisions for a patient has

the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

Article 2 POWERS OF ATTORNEY FOR HEALTH CARE

§ 4680. Sufficiency of power of attorney

A power of attorney for health care is legally sufficient if it satisfies the requirements of Section 4673.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4681. Limitations on statutory authority

(a) Except as provided in subdivision (b), the principal may limit the application of any provision of this division by an express statement in the power of attorney for health care or by providing an inconsistent rule in the power of attorney.

(b) A power of attorney for health care may not limit either the application of a statute specifically providing that it is not subject to limitation in the power of attorney or a statute concerning any of the following:

(1) Statements required to be included in a power of attorney.

(2) Operative dates of statutory enactments or amendments.

(3) Formalities for execution of a power of attorney for health care.

(4) Qualifications of witnesses.

(5) Qualifications of agents.

(6) Protection of third persons from liability.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4682. Authority of agent

Unless otherwise provided in a power of attorney for health care, the authority of an agent becomes effective only on a determination that the principal lacks capacity, and ceases to be effective on a determination that the principal has recovered capacity.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4683. Scope of agent's authority

Subject to any limitations in the power of attorney for health care:

(a) An agent designated in the power of attorney may make health care decisions for the principal to the same extent the principal could make health care decisions if the principal had the capacity to do so.

(b) The agent may also make decisions that may be effective after the principal's death, including the following:

(1) Making a disposition under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(2) Authorizing an autopsy under Section 7113 of the Health and Safety Code.

(3) Directing the disposition of remains under Section 7100 of the Health and Safety Code.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4684. Decisions to be made in principal's best interests

An agent shall make a health care decision in accordance with the principal's individual health care instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4685. Agent; priority in making health care decisions

Unless the power of attorney for health care provides otherwise, the agent designated in the power of attorney who is known to the health care provider to be reasonably available and willing to make health care decisions has priority over any other person in making health care decisions for the principal.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4686. Lapse of time since execution of power of attorney; effect

Unless the power of attorney for health care provides a time of termination, the authority of the agent is exercisable notwithstanding any lapse of time since execution of the power of attorney.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4687. Rights of agent apart from power of attorney

Nothing in this division affects any right the person designated as an agent under a power of attorney for health care may have, apart from the power of attorney, to make or participate in making health care decisions for the principal.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4688. Law of agency; application

Where this division does not provide a rule governing agents under powers of attorney, the law of agency applies.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4689. Objection to agent's health care decision by principal; effect

Nothing in this division authorizes an agent under a power of attorney for health care to make a health care decision if the principal objects to the decision. If the principal objects to the health care decision of the agent under a power of attorney, the matter shall be governed by the law that would apply if there were no power of attorney for health care.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4690. Incapacity of principal; determination

If the principal becomes wholly or partially incapacitated, or if there is a question concerning the capacity of the principal, the agent may consult with a person previously designated by the principal for this purpose, and may also consult with and obtain information needed to carry out the agent's duties from the principal's spouse, physician, attorney, a member of the principal's family, or other person, including a business entity or government agency, with respect to matters covered by the power of attorney for health care. A person from whom information is requested shall disclose relevant information to the agent. Disclosure under this section is not a waiver of any privilege that may apply to the information disclosed.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

Article 3 REVOCATION OF ADVANCE DIRECTIVES

§ 4695. Persons entitled to revoke advance directives; method

(a) A patient having capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(b) A patient having capacity may revoke all or part of an advance health care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4696. Communication of fact of revocation

A health care provider, agent, conservator, or surrogate who is informed of a revocation of an advance health care directive shall promptly communicate the fact of the revocation to the supervising health care provider and to any health care institution where the patient is receiving care.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4697. Dissolution of marriage; effect

(a) If after executing a power of attorney for health care the principal's marriage to the agent is dissolved or annulled, the principal's designation of the former spouse as an agent to make health care decisions for the principal is revoked.

(b) If the agent's authority is revoked solely by subdivision (a), it is revived by the principal's remarriage to the agent.
(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4698. Conflicting directives

An advance health care directive that conflicts with an earlier advance directive revokes the earlier advance directive to the extent of the conflict.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

Chapter 2 ADVANCE HEALTH CARE DIRECTIVE FORMS

§ 4700. Use of particular form not required; effect of form or other writing

The form provided in Section 4701 may, but need not, be used to create an advance health care directive. The other sections of this division govern the effect of the form or any other writing used to create an advance health care directive. An individual may complete or modify all or any part of the form in Section 4701.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4701. Statutory form

The statutory advance health care directive form is as follows:

ADVANCE HEALTH CARE DIRECTIVE

(California Probate Code Section 4701)

Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding donation of organs and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. (Your agent may not be an operator or employee of a community care facility or a residential care facility where you are receiving care, or your supervising health care provider or employee of the health care institution where you are receiving care, unless your agent is related to you or is a coworker.)

Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

(a) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition.

(b) Select or discharge health care providers and institutions.

(c) Approve or disapprove diagnostic tests, surgical procedures, and programs of medication.

(d) Direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.

(e) Make anatomical gifts, authorize an autopsy, and direct disposition of remains.

Part 2 of this form lets you give specific instructions about any aspect of your health care, whether or not you appoint an agent. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep you alive, as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes. If you are satisfied to allow your agent to determine what is best for you in making end–of–life decisions, you need not fill out Part 2 of this form.

Part 3 of this form lets you express an intention to donate your bodily organs and tissues following your death.

Part 4 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. The form must be signed by two qualified witnesses or acknowledged before a notary public. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any health care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health care directive or replace this form at any time.

* * * * * * * * * * * * * * * * * * * *

PART 1
POWER OF ATTORNEY FOR HEALTH CARE

(1.1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health care decisions for me:

_____
(name of individual you choose as agent)

_____
(address) (city) (state) (ZIP Code)

_____
(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, I designate as my first alternate agent:

_____
(name of individual you choose as first alternate agent)

_____
(address) (city) (state) (ZIP Code)

_____
(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent:

_____
(name of individual you choose as second alternate agent)

_____
(address) (city) (state) (ZIP Code)

_____
(home phone) (work phone)

(1.2) AGENT'S AUTHORITY: My agent is authorized to make all health care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

_____
_____
_____
(Add additional sheets if needed.)

(1.3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. If I mark this box □, my agent's authority to make health care decisions for me takes effect immediately.

(1.4) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(1.5) AGENT'S POSTDEATH AUTHORITY: My agent is authorized to make anatomical gifts, authorize an autopsy, and direct disposition of my remains, except as I state here or in Part 3 of this form:

_____
_____
_____
(Add additional sheets if needed.)

(1.6) NOMINATION OF CONSERVATOR: If a conservator of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as conservator, I nominate the alternate agents whom I have named, in the order designated.

PART 2
INSTRUCTIONS FOR HEALTH CARE

If you fill out this part of the form, you may strike any wording you do not want.

(2.1) END–OF–LIFE DECISIONS: I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

□ (a) Choice Not To Prolong Life

I do not want my life to be prolonged if (1) I have an incurable and irreversible condition that will result in my death within a relatively short time, (2) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (3) the likely risks and burdens of treatment would outweigh the expected benefits, OR

□ (b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

(2.2) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

_____
_____
(Add additional sheets if needed.)

(2.3) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

_____

_____

(Add additional sheets if needed.)

PART 3
DONATION OF ORGANS AT DEATH
(OPTIONAL)

(3.1) Upon my death (mark applicable box):

☐ (a) I give any needed organs, tissues, or parts, OR

☐ (b) I give the following organs, tissues, or parts only.[1]

_____

☐ (c) My gift is for the following purposes (strike any of[2] the following you do not want):

(1) Transplant

(2) Therapy

(3) Research

(4) Education

PART 4
PRIMARY PHYSICIAN
(OPTIONAL)

(4.1) I designate the following physician as my primary[3] physician:

_____
(name of physician)

_____
(address) (city) (state) (ZIP Code)

_____
(phone)

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate[4] the following physician as my primary physician:
(name of physician)

_____
(name of physician)

_____
(address) (city) (state) (ZIP Code)

_____
(phone)

* * * * * * * * * * * * * * * *

PART 5

(5.1) EFFECT OF COPY: A copy of this form has the same effect as[5] the original.

(5.2) SIGNATURE: Sign and date the form here:[6]

_____ _____
(date) (sign your name)

_____ _____
(address) (print your name)

_____
(city) (state)

(5.3) STATEMENT OF WITNESSES: I declare under penalty of perjury under the laws of California (1) that the individual who signed or acknowledged this advance health care directive is personally known to me, or that the individual's identity was proven to me by convincing evidence, (2) that the individual signed or acknowledged this advance directive in my presence, (3) that the individual appears to be of sound mind and under no duress, fraud, or undue influence, (4) that I am not a person appointed as agent by this advance directive, and (5) that I am not the individual's health care provider, an employee of the individual's health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.

First witness	Second witness
_____ (print name)	_____ (print name)
_____ (address)	_____ (address)
_____ (city) (state)	_____ (city) (state)
_____ (signature of witness)	_____ (signature of witness)
_____ (date)	_____ (date)

(5.4) ADDITIONAL STATEMENT OF WITNESSES: At least one of the above witnesses must also sign the following declaration:

I further declare under penalty of perjury under the laws of California that I am not related to the individual executing this advance health care directive by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the individual's estate upon his or her death under a will now existing or by operation of law.

_____ (signature of witness)	_____ (signature of witness)

PART 6
SPECIAL WITNESS REQUIREMENT

(6.1) The following statement is required only if you are a patient in a skilled nursing facility—a health care facility that provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. The patient advocate or ombudsman must sign the following statement:

STATEMENT OF PATIENT ADVOCATE OR OMBUDSMAN

I declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman as designated by the State Department of Aging and that I am serving as a witness as required by Section 4675 of the Probate Code.

_____ (date)	_____ (sign your name)
_____ (address)	_____ (print your name)
_____ (city) (state)	

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

[1] So in enrolled bill.

[2] So in enrolled bill.

[3] So in enrolled bill.

[4] So in enrolled bill.

[5] So in enrolled bill.

[6] So in enrolled bill.

Chapter 3 HEALTH CARE SURROGATES

§ 4711. Designation of surrogate for health care decisions; expiration; priority and revocation

(a) A patient may designate an adult as a surrogate to make health care decisions by personally informing the supervising health care provider. The designation of a surrogate shall be promptly recorded in the patient's health care record.

(b) Unless the patient specifies a shorter period, a surrogate designation under subdivision (a) is effective only during the course of treatment or illness or during the stay in the health care institution when the surrogate designation is made, or for 60 days, whichever period is shorter.

(c) The expiration of a surrogate designation under subdivision (b) does not affect any role the person designated under subdivision (a) may have in making health care decisions for the patient under any other law or standards of practice.

(d) If the patient has designated an agent under a power of attorney for health care, the surrogate designated under subdivision (a) has priority over the agent for the period provided in subdivision (b), but the designation of a surrogate does not revoke the designation of an agent unless the patient communicates the intention to revoke in compliance with subdivision (a) of Section 4695.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000. Amended by Stats.2001, c. 230 (A.B.1278), § 5.)

§ 4714. Decisions based on patient's best interests

A surrogate, including a person acting as a surrogate, shall make a health care decision in accordance with the patient's individual health care instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4715. Disqualification of person from acting as surrogate

A patient having capacity at any time may disqualify another person, including a member of the patient's family, from acting as the patient's surrogate by a signed writing or by personally informing the supervising health care provider of the disqualification.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4716. Domestic partner of patient

(a) If a patient lacks the capacity to make a health care decision, the patient's domestic partner shall have the same authority as a spouse has to make a health care decision for his or her incapacitated spouse. This section may not be construed to expand or restrict the ability of a spouse to make a health care decision for an incapacitated spouse.

(b) For the purposes of this section, the following definitions shall apply:

(1) "Capacity" has the same meaning as defined in Section 4609.

(2) "Health care" has the same meaning as defined in Section 4615.

(3) "Health care decision" has the same meaning as defined in Section 4617.

(4) "Domestic partner" has the same meaning as that term is used in Section 297 of the Family Code.

(Added by Stats.2001, c. 893 (A.B.25), § 49.)

§ 4717. Authority to make health care decisions on behalf of patient who is unconscious or incapable of communication; duty of hospital to make reasonable efforts to contact patient's agent, surrogate or family member; exceptions

(a) Notwithstanding any other provision of law, within 24 hours of the arrival in the emergency department of a general acute care hospital of a patient who is unconscious or otherwise incapable of communication, the hospital shall make reasonable efforts to contact the patient's agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient. A hospital shall be deemed to have made reasonable efforts, and to have discharged its duty under this section, if it does all of the following:

(1) Examines the personal effects, if any, accompanying the patient and any medical records regarding the patient in its possession, and reviews any verbal or written report made by emergency medical technicians or the police, to identify the name of any agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient.

(2) Contacts or attempts to contact any agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient, as identified in paragraph (1).

(3) Contacts the Secretary of State directly or indirectly, including by voice mail or facsimile, to inquire whether the patient has registered an advance health care directive with the Advance Health Care Directive Registry, if the hospital finds evidence of the patient's Advance Health Care Directive Registry identification card either from the patient or from the patient's family or authorized agent.

(b) The hospital shall document in the patient's medical record all efforts made to contact any agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient.

(c) Application of this section shall be suspended during any period in which the hospital implements its disaster and mass casualty program, or its fire and internal disaster program.

(Formerly § 4716, added by Stats.2001, c. 329 (S.B.751), § 1. Renumbered § 4717 and amended by Stats. 2004, c. 882 (A.B.2445), § 2.)

Chapter 4 DUTIES OF HEALTH CARE PROVIDERS

§ 4730. Communication to patient

Before implementing a health care decision made for a patient, a supervising health care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4731. Recording of information in patient's health care record; notification to agent or surrogate regarding revocation or disqualification

(a) A supervising health care provider who knows of the existence of an advance health care directive, a revocation of an advance health care directive, or a designation or disqualification of a surrogate, shall promptly record its existence in the patient's health care record and, if it is in writing, shall request a copy. If a copy is furnished, the supervising health care provider shall arrange for its maintenance in the patient's health care record.

(b) A supervising health care provider who knows of a revocation of a power of attorney for health care or a disqualification of a surrogate shall make a reasonable effort to notify the agent or surrogate of the revocation or disqualification.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4732. Primary physician; duty to record information regarding patient's capacity

A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists affecting an individual health care instruction or the authority of an agent, conservator of the person, or surrogate, shall promptly record the determination in the patient's health care record and communicate the determination to the patient, if possible, and to a person then authorized to make health care decisions for the patient.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4733. Compliance with health care instructions and health care decisions

Except as provided in Sections 4734 and 4735, a health care provider or health care institution providing care to a patient shall do the following:

(a) Comply with an individual health care instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient.

(b) Comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4734. Declining to comply with health care instruction or decision due to reasons of conscience

(a) A health care provider may decline to comply with an individual health care instruction or health care decision for reasons of conscience.

(b) A health care institution may decline to comply with an individual health care instruction or health care decision if the instruction or decision is contrary to a policy of the institution that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4735. Declining to comply with health care instruction or decision that is medically ineffective

A health care provider or health care institution may decline to comply with an individual health care instruction or health care decision that requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4736. Duties upon declining to comply with health care instruction or decision

A health care provider or health care institution that declines to comply with an individual health care instruction or health care decision shall do all of the following:

(a) Promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient.

(b) Unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision.

(c) Provide continuing care to the patient until a transfer can be accomplished or until it appears that a transfer cannot be accomplished. In all cases, appropriate pain relief and other palliative care shall be continued.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

Chapter 5 IMMUNITIES AND LIABILITIES

§ 4740. Health care provider or institution; immunity from civil or criminal liability

A health care provider or health care institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for any actions in compliance with this division, including, but not limited to, any of the following conduct:

(a) Complying with a health care decision of a person that the health care provider or health care institution believes in good faith has the authority to make a health care decision for a patient, including a decision to withhold or withdraw health care.

(b) Declining to comply with a health care decision of a person based on a belief that the person then lacked authority.

(c) Complying with an advance health care directive and assuming that the directive was valid when made and has not been revoked or terminated.

(d) Declining to comply with an individual health care instruction or health care decision, in accordance with Sections 4734 to 4736, inclusive.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4741. Agent or surrogate; immunity from civil or criminal liability

A person acting as agent or surrogate under this part is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4742. Intentional violations and acts; liability; damages

(a) A health care provider or health care institution that intentionally violates this part is subject to liability to the aggrieved individual for damages of two thousand five hundred dollars ($2,500) or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees.

(b) A person who intentionally falsifies, forges, conceals, defaces, or obliterates an individual's advance health care directive or a revocation of an advance health care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give an advance health care directive, is subject to liability to that individual for damages of ten thousand dollars ($10,000) or actual damages resulting from the action, whichever is greater, plus reasonable attorney's fees.

(c) The damages provided in this section are cumulative and not exclusive of any other remedies provided by law.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4743. Altering or forging health care directive; criminal liability

Any person who alters or forges a written advance health care directive of another, or willfully conceals or withholds personal knowledge of a revocation of an advance directive, with the intent to cause a withholding or withdrawal of health care necessary to keep the patient alive contrary to the desires of the patient, and thereby directly causes health care necessary to keep the patient alive to be withheld or withdrawn and the death of the patient thereby to be hastened, is subject to prosecution for unlawful homicide as provided in Chapter 1 (commencing with Section 187) of Title 8 of Part 1 of the Penal Code.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

Part 3 JUDICIAL PROCEEDINGS

Chapter 1 GENERAL PROVISIONS

§ 4750. Necessity of judicial intervention or approval

Subject to this division:

(a) An advance health care directive is effective and exercisable free of judicial intervention.

(b) A health care decision made by an agent for a principal is effective without judicial approval.

(c) A health care decision made by a surrogate for a patient is effective without judicial approval.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4751. Cumulative nature of remedies

The remedies provided in this part are cumulative and not exclusive of any other remedies provided by law.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4752. Ability to limit judicial intervention or authority

Except as provided in Section 4753, this part is not subject to limitation in an advance health care directive.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4753. Limitation on ability of person to petition court; requirements; restrictions

(a) Subject to subdivision (b), an advance health care directive may expressly eliminate the authority of a person listed in Section 4765 to petition the court for any one or more of the purposes enumerated in Section 4766, if both of the following requirements are satisfied:

(1) The advance directive is executed by an individual having the advice of a lawyer authorized to practice law in the state where the advance directive is executed.

(2) The individual's lawyer signs a certificate stating in substance:

"I am a lawyer authorized to practice law in the state where this advance health care directive was executed, and _____ [insert name] was my client at the time this advance directive was executed. I have advised my client concerning his or her rights in connection with this advance directive and the applicable law and the consequences of signing or not signing this advance directive, and my client, after being so advised, has executed this advance directive."

(b) An advance health care directive may not limit the authority of the following persons to petition under this part:

(1) The conservator of the person, with respect to a petition relating to an advance directive, for a purpose specified in subdivision (b) or (d) of Section 4766.

(2) The agent, with respect to a petition relating to a power of attorney for health care, for a purpose specified in subdivision (b) or (c) of Section 4766.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4754. Jury trial

There is no right to a jury trial in proceedings under this division.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4755. Application of Division 3

Except as otherwise provided in this division, the general provisions in Division 3 (commencing with Section 1000) apply to proceedings under this division.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

Chapter 2 JURISDICTION AND VENUE

§ 4760. Superior court jurisdiction

(a) The superior court has jurisdiction in proceedings under this division.

(b) The court in proceedings under this division is a court of general jurisdiction and the court, or a judge of the court, has the same power and authority with respect to the proceedings as otherwise provided by law for a superior court, or a judge of the superior court, including, but not limited to, the matters authorized by Section 128 of the Code of Civil Procedure.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4761. Exercise of jurisdiction

The court may exercise jurisdiction in proceedings under this division on any basis permitted by Section 410.10 of the Code of Civil Procedure.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4762. Agent or surrogate subject to personal jurisdiction

Without limiting Section 4761, a person who acts as an agent under a power of attorney for health care or as a surrogate under this division is subject to personal jurisdiction in this state with respect to matters relating to acts and transactions of the agent or surrogate performed in this state or affecting a patient in this state.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4763. Venue

The proper county for commencement of a proceeding under this division shall be determined in the following order of priority:

(a) The county in which the patient resides.

(b) The county in which the agent or surrogate resides.

(c) Any other county that is in the patient's best interest.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

Chapter 3 PETITIONS AND ORDERS

§ 4765. Persons entitled to file petition

Subject to Section 4753, a petition may be filed under this part by any of the following persons:

(a) The patient.

(b) The patient's spouse, unless legally separated.

(c) A relative of the patient.

(d) The patient's agent or surrogate.

(e) The conservator of the person of the patient.

(f) The court investigator, described in Section 1454, of the county where the patient resides.

(g) The public guardian of the county where the patient resides.

(h) The supervising health care provider or health care institution involved with the patient's care.

(i) Any other interested person or friend of the patient.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4766. Purposes for filing petition

A petition may be filed under this part for any one or more of the following purposes:

(a) Determining whether or not the patient has capacity to make health care decisions.

(b) Determining whether an advance health care directive is in effect or has terminated.

(c) Determining whether the acts or proposed acts of an agent or surrogate are consistent with the patient's desires as expressed in an advance health care directive or otherwise made known to the court or, where the patient's desires are unknown or unclear, whether the acts or proposed acts of the agent or surrogate are in the patient's best interest.

(d) Declaring that the authority of an agent or surrogate is terminated, upon a determination by the court that the agent or surrogate has made a health care decision for the patient that authorized anything illegal or upon a determination by the court of both of the following:

(1) The agent or surrogate has violated, has failed to perform, or is unfit to perform, the duty under an advance health care directive to act consistent with the patient's desires or, where the patient's desires are unknown or unclear, is acting (by action or inaction) in a manner that is clearly contrary to the patient's best interest.

(2) At the time of the determination by the court, the patient lacks the capacity to execute or to revoke an advance health care directive or disqualify a surrogate.

(e) Compelling a third person to honor individual health care instructions or the authority of an agent or surrogate.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000. Amended by Stats.2001, c. 230 (A.B.1278), § 7.)

§ 4767. Commencement of proceeding

A proceeding under this part is commenced by filing a petition stating facts showing that the petition is authorized under this part, the grounds of the petition, and, if known to the petitioner, the terms of any advance health care directive in question.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4768. Dismissal of petition

The court may dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the patient and shall stay or dismiss the proceeding in whole or in part when required by Section 410.30 of the Code of Civil Procedure.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4769. Notice of time and place of hearing

(a) Subject to subdivision (b), at least 15 days before the time set for hearing, the petitioner shall serve notice of the time and place of the hearing, together with a copy of the petition, on the following:

(1) The agent or surrogate, if not the petitioner.

(2) The patient, if not the petitioner.

(b) In the case of a petition to compel a third person to honor individual health care instructions or the authority of an agent or surrogate, notice of the time and place of the hearing, together with a copy of the petition, shall be served on the third person in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000. Amended by Stats.2001, c. 230 (A.B.1278), § 8.)

§ 4770. Temporary order prescribing health care

The court in its discretion, on a showing of good cause, may issue a temporary order prescribing the health care of the patient until the disposition of the petition filed under Section 4766. If a power of attorney for health care is in effect and a conservator (including a temporary conservator) of the person is appointed for the principal, the court that appoints the conservator in its discretion, on a showing of good cause, may issue a temporary order prescribing the health care of the principal, the order to continue in effect for the period ordered by the court but in no case longer than the period necessary to permit the filing and determination of a petition filed under Section 4766.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4771. Attorney's fees

In a proceeding under this part commenced by the filing of a petition by a person other than the agent or surrogate, the court may in its discretion award reasonable attorney's fees to one of the following:

(a) The agent or surrogate, if the court determines that the proceeding was commenced without any reasonable cause.

(b) The person commencing the proceeding, if the court determines that the agent or surrogate has clearly violated the duties under the advance health care directive.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

Part 4 REQUEST TO FORGO RESUSCITATIVE MEASURES

§ 4780. Definitions

(a) As used in this part:

(1) "Request to forgo resuscitative measures" means a written document, signed by (A) an individual, or a legally recognized surrogate health care decisionmaker, and (B) a physician, that directs a health care provider to forgo resuscitative measures for the individual.

(2) "Request to forgo resuscitative measures" includes a prehospital "do not resuscitate" form as developed by the Emergency Medical Services Authority or other substantially similar form.

(b) A request to forgo resuscitative measures may also be evidenced by a medallion engraved with the words "do not resuscitate" or the letters "DNR," a patient identification number, and a 24–hour toll–free telephone number, issued by a person pursuant to an agreement with the Emergency Medical Services Authority.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4781. "Health care provider"

As used in this part, "health care provider" includes, but is not limited to, the following:

(a) Persons described in Section 4621.

(b) Emergency response employees, including, but not limited to, firefighters, law enforcement officers, emergency medical technicians I and II, paramedics, and employees and volunteer members of legally organized and recognized volunteer organizations, who are trained in accordance with standards adopted as regulations by the Emergency Medical Services Authority pursuant to Sections 1797.170, 1797.171, 1797.172, 1797.182, and 1797.183 of the Health and Safety Code to respond to medical emergencies in the course of performing their volunteer or employee duties with the organization.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4782. Immunity from criminal or civil liability or other sanction

A health care provider who honors a request to forgo resuscitative measures is not subject to criminal prosecution, civil liability, discipline for unprofessional conduct, administrative sanction, or any other sanction, as a result of his or her reliance on the request, if the health care provider (a) believes in good faith that the action or decision is consistent with this part, and (b) has no knowledge that the action or decision would be inconsistent with a health care decision that the individual signing the request would have made on his or her own behalf under like circumstances.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4783. Forms; contents

(a) Forms for requests to forgo resuscitative measures printed after January 1, 1995, shall contain the following:

"By signing this form, the surrogate acknowledges that this request to forgo resuscitative measures is consistent with the known desires of, and with the best interest of, the individual who is the subject of the form."

(b) A substantially similar printed form is valid and enforceable if all of the following conditions are met:

(1) The form is signed by the individual, or the individual's legally recognized surrogate health care decisionmaker, and a physician.

(2) The form directs health care providers to forgo resuscitative measures.

(3) The form contains all other information required by this section.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4784. Presumption of validity or request

In the absence of knowledge to the contrary, a health care provider may presume that a request to forgo resuscitative measures is valid and unrevoked.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4785. Persons within or outside of hospital; application of part

This part applies regardless of whether the individual executing a request to forgo resuscitative measures is within or outside a hospital or other health care institution.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4786. Effect on other laws

This part does not repeal or narrow laws relating to health care decisionmaking.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

Part 5 ADVANCE HEALTH CARE DIRECTIVE REGISTRY

§ 4800. Registry system; establishment

(a) The Secretary of State shall establish a registry system through which a person who has executed a written advance health care directive may register in a central information center, information regarding the advance directive, making that information available upon request to any health care provider, the public guardian, or the legal representative of the registrant. A request for information pursuant to this section shall state the need for the information.

(b) The Secretary of State shall respond by the close of business on the next business day to a request for information made pursuant to Section 4717 by the emergency department of a general acute care hospital.

(c) Information that may be received is limited to the registrant's name, social security number, driver's license number, or other individual identifying number established by law, if any, address, date and place of birth, the registrant's advance health care directive, an intended place of deposit or safekeeping of a written advance health care directive, and the name and telephone number of the agent and any alternative agent. Information that may be released upon request may not include the registrant's social security number except when necessary to verify the identity of the registrant.

(d) When the Secretary of State receives information from a registrant, the secretary shall issue the registrant an Advance Health Care Directive Registry identification card indicating that an advance health care directive, or information regarding an advance health care directive, has been deposited with the registry. Costs associated with issuance of the card shall be offset by the fee charged by the Secretary of State to receive and register information at the registry.

(e) The Secretary of State, at the request of the registrant or his or her legal representative, shall transmit the information received regarding the written advance health care directive to the registry system of another jurisdiction as identified by the registrant, or his or her legal representative.

(f) The Secretary of State shall charge a fee to each registrant in an amount such that, when all fees charged to registrants are aggregated, the aggregated fees do not exceed the actual cost of establishing and maintaining the registry.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000. Amended by Stats.2004, c. 882 (A.B.2445), § 3.)

§ 4801. Procedures to verify identities; fees

The Secretary of State shall establish procedures to verify the identities of health care providers, the public guardian, and other authorized persons requesting information pursuant to Section 4800. No fee shall be charged to any health care provider, the public guardian, or other authorized person requesting information pursuant to Section 4800.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4802. Procedures to advise registrants of certain matters

The Secretary of State shall establish procedures to advise each registrant of the following:

(a) A health care provider may not honor a written advance health care directive until it receives a copy from the registrant.

(b) Each registrant must notify the registry upon revocation of the advance directive.

(c) Each registrant must reregister upon execution of a subsequent advance directive.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4803. Failure to register; effect on validity of directive

Failure to register with the Secretary of State does not affect the validity of any advance health care directive.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4804. Effect of registration on ability to revoke directive

Registration with the Secretary of State does not affect the ability of the registrant to revoke the registrant's advance health care directive or a later executed advance directive, nor does registration raise any presumption of validity or superiority among any competing advance directives or revocations.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000.)

§ 4805. Duties of health care providers; effect of part

Nothing in this part shall be construed to affect the duty of a health care provider to provide information to a patient regarding advance health care directives pursuant to any provision of federal law.

(Added by Stats.1999, c. 658 (A.B.891), § 39, operative July 1, 2000. Amended by Stats.2004, c. 882 (A.B.2445), § 4.)

PROBATE CODE — WILLS

Division 6 WILLS AND INTESTATE SUCCESSION

Part 1 WILLS

Chapter 1 GENERAL PROVISIONS

APPLICATION

Chapter 1 applicable where testator died on or after Jan. 1, 1985. For provisions applicable where testator died before Jan. 1, 1985, see § 6103 and Law Revision Commission Comments for sections in Chapter 1.

§ 6100. Persons who may make will

(a) An individual 18 or more years of age who is of sound mind may make a will.

(b) A conservator may make a will for the conservatee if the conservator has been so authorized by a court order pursuant to Section 2580. Nothing in this section shall impair the right of a conservatee who is mentally competent to make a will from revoking or amending a will made by the conservator or making a new and inconsistent will.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1995, c. 730 (A.B.1466), § 7.)

§ 6100.5. Persons not mentally competent to make a will; specified circumstances

(a) An individual is not mentally competent to make a will if at the time of making the will either of the following is true:

(1) The individual does not have sufficient mental capacity to be able to (A) understand the nature of the testamentary act, (B) understand and recollect the nature and situation of the individual's property, or (C) remember and understand the individual's relations to living descendants, spouse, and parents, and those whose interests are affected by the will.

(2) The individual suffers from a mental disorder with symptoms including delusions or hallucinations, which delusions or hallucinations result in the individual's devising property in a way which, except for the existence of the delusions or hallucinations, the individual would not have done.

(b) Nothing in this section supersedes existing law relating to the admissibility of evidence to prove the existence of mental incompetence or mental disorders.

(c) Notwithstanding subdivision (a), a conservator may make a will on behalf of a conservatee if the conservator has been so authorized by a court order pursuant to Section 2580.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.1995, c. 730 (A.B.1466), § 8.)

§ 6101. Property which may be disposed of by will

A will may dispose of the following property:

(a) The testator's separate property.

(b) The one–half of the community property that belongs to the testator under Section 100.

(c) The one–half of the testator's quasi–community property that belongs to the testator under Section 101.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 6102. Persons to whom will may dispose of property

A will may make a disposition of property to any person, including but not limited to any of the following:

(a) An individual.

(b) A corporation.

(c) An unincorporated association, society, lodge, or any branch thereof.

(d) A county, city, city and county, or any municipal corporation.

(e) Any state, including this state.

(f) The United States or any instrumentality thereof.

(g) A foreign country or a governmental entity therein.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 6103. Application of certain chapters

Except as otherwise specifically provided, Chapter 1 (commencing with Section 6100), Chapter 2 (commencing with Section 6110), Chapter 3 (commencing with Section 6120), Chapter 4 (commencing with Section 6130), Chapter 6 (commencing with Section 6200), and Chapter 7 (commencing with Section 6300) of this division, and Part 1 (commencing with Section 21101) of Division 11, do not apply where the testator died before January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where the testator died before January 1, 1985.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats.2002, c. 138 (A.B.1784), § 6.)

§ 6104. Duress, menace, fraud, or undue influence; effect on execution or revocation

The execution or revocation of a will or a part of a will is ineffective to the extent the execution or revocation was procured by duress, menace, fraud, or undue influence.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

§ 6105. Conditional validity

A will, the validity of which is made conditional by its own terms, shall be admitted to probate or rejected, or denied effect after admission to probate, in conformity with the condition.

(Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991.)

PUBLIC CONTRACT CODE — GENERAL PROVISIONS

PUBLIC CONTRACT CODE

Division 2 GENERAL PROVISIONS

Part 2 CONTRACTING BY STATE AGENCIES

Chapter 2 STATE ACQUISITION OF GOODS AND SERVICES

Article 2 APPROVAL OF CONTRACTS

§ 10295.3. Contracts for acquisition of goods or services between state agency and contractor; discrimination against employees with domestic partners; definitions; application of section; conditions; confidentiality; waiver of section requirements; violation of section

(a)(1) Notwithstanding any other provision of law, no state agency may enter into any contract for the acquisition of goods or services in the amount of one hundred thousand dollars ($100,000) or more with a contractor who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between the domestic partners and spouses of those employees.

(2) For purposes of this section, "contract" includes contracts with a cumulative amount of one hundred thousand dollars ($100,000) or more per contractor in each fiscal year.

(3) For purposes of this section, "domestic partner" means one of two persons who has filed a declaration of domestic partnership with the Secretary of State pursuant to Division 2.5 (commencing with Section 297) of the Family Code.

(4)(A) Subject to subparagraph (B), this section does not apply to any contracts executed or amended prior to January 1, 2007, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the state, prior to January 1, 2007, unless and until those contracts or property contracts are amended after December 31, 2006, and would otherwise be subject to this section.

(B) If a duration of a contract executed or amended prior to January 1, 2007, is for more than one year going beyond January 1, 2008, this section shall apply to the contract on January 1, 2008.

(5) The requirements of this section shall apply only to those portions of a contractor's operations that occur under any of the following conditions:

(A) Within the state.

(B) On real property outside the state if the property is owned by the state or if the state has a right to occupy the property, and if the contractor's presence at that location is connected to a contract with the state.

(C) Elsewhere in the United States where work related to a state contract is being performed.

(b) Contractors shall treat as confidential to the maximum extent allowed by law or by the requirement of the contractor's insurance provider, any request by an employee or applicant for employment for domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee or applicant for employment.

(c) After taking all reasonable measures to find a contractor that complies with this section as determined by the state agency, the requirements of this section may be waived under any of the following circumstances:

(1) Whenever there is only one prospective contractor willing to enter into a specific contract with the state agency.

(2) If the contract is necessary to respond to an emergency, as determined by the state agency, that endangers the public health, welfare, or safety, or the contract is necessary for the provision of essential services, and no entity that complies with the requirements of this section capable of responding to the emergency is immediately available.

(3) Where the requirements of this section violate, or are inconsistent with, the terms or conditions of a grant, subvention, or agreement, provided that a good faith attempt has been made by the agency to change the terms or conditions of any grant, subvention, or agreement to authorize application of this section.

(4) Where the contractor is providing wholesale or bulk water, power, or natural gas, the conveyance or transmission of the same, or ancillary services, as required for assuring reliable services in accordance with good utility practice, provided that the purchase of the same may not practically be accomplished through the standard competitive bidding procedures, and further provided that this exemption does not apply to contractors providing direct retail services to end users.

(d)(1) If there is a difference in the cost to provide a certain benefit to a domestic partner or spouse, the contractor is not deemed to be in violation of this section so long as it permits the employee to pay any excess costs.

(2) The contractor is not deemed to discriminate in the provision of benefits if the contractor, in providing the benefits, pays the actual costs incurred in obtaining the benefit.

(3) In the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor may not be deemed to discriminate in the provision of benefits.

(4) For any contracts executed or amended on or after July 1, 2004, and prior to January 1, 2007, and to bid packages advertised and made available to the public, or any competitive or sealed bids received by the state, on or after July 1, 2004, and prior to January 1, 2007, unless and until those contracts or bid packages are amended after June 30, 2004, but prior to January 1, 2007, and would otherwise be subject to this section, a contractor may require an employee to pay the costs of providing additional benefits that are offered to comply with this section if an employee elects to have the additional benefits. This paragraph shall not be construed to permit a contractor to require an employee to cover the costs of providing any benefits, which have otherwise been provided to all employees regardless of marital or domestic partner status.

(e) A contractor is not deemed to be in violation of this section if the contractor does any of the following:

(1) Offers the same benefits to employees with domestic partners and employees with spouses and offers the same benefits to domestic partners and spouses of employees.

(2) Elects to provide the same benefits to individuals that are provided to employees' spouses and employees' domestic partners.

(3) Elects to provide benefits on a basis unrelated to an employee's marital status or domestic partnership status, including, but not limited to, allowing each employee to designate a legally domiciled member of the employee's household as being eligible for benefits.

(4) Elects not to provide benefits to employees based on their marital status or domestic partnership status, or elects not to provide benefits to employees' spouses and to employees' domestic partners.

(f)(1) Every contract subject to this chapter shall contain a

statement by which the contractor certifies that the contractor is in compliance with this section.

(2) The department or other contracting agency shall enforce this section pursuant to its existing enforcement powers.

(3)(A) If a contractor falsely certifies that it is in compliance with this section, the contract with that contractor shall be subject to Article 9 (commencing with Section 10420), unless, within a time period specified by the department or other contracting agency, the contractor provides to the department or agency proof that it has complied, or is in the process of complying, with this section.

(B) The application of the remedies or penalties contained in Article 9 (commencing with Section 10420) to a contract subject to this chapter shall not preclude the application of any existing remedies otherwise available to the department or other contracting agency under its existing enforcement powers.

(g) Nothing in this section is intended to regulate the contracting practices of any local jurisdiction.

(h) This section shall be construed so as not to conflict with applicable federal laws, rules, or regulations. In the event that a court or agency of competent jurisdiction holds that federal law, rule, or regulation invalidates any clause, sentence, paragraph, or section of this code or the application thereof to any person or circumstances, it is the intent of the state that the court or agency sever that clause, sentence, paragraph, or section so that the remainder of this section shall remain in effect.

(Added by Stats.2003, c. 752 (A.B.17), § 1. Amended by Stats.2004, c. 183 (A.B.3082), § 284.)

WELFARE AND INSTITUTIONS CODE

Division 2 CHILDREN

Part 1 DELINQUENTS AND WARDS OF THE JUVENILE COURT

Chapter 2 JUVENILE COURT LAW

Article 1 GENERAL PROVISIONS

§ 208. Detention or sentence to adult institutions; contact with adults; adults committed for sex offenses

(a) When any person under 18 years of age is detained in or sentenced to any institution in which adults are confined, it shall be unlawful to permit such person to come or remain in contact with such adults.

(b) No person who is a ward or dependent child of the juvenile court who is detained in or committed to any state hospital or other state facility shall be permitted to come or remain in contact with any adult person who has been committed to any state hospital or other state facility as a mentally disordered sex offender under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6, or with any adult person who has been charged in an accusatory pleading with the commission of any sex offense for which registration of the convicted offender is required under Section 290 of the Penal Code and who has been committed to any state hospital or other state facility pursuant to Section 1026 or 1370 of the Penal Code.

(c) As used in this section, "contact" does not include participation in supervised group therapy or other supervised treatment activities, participation in work furlough programs, or participation in hospital recreational activities which are directly supervised by employees of the hospital, so long as living arrangements are strictly segregated and all precautions are taken to prevent unauthorized associations.

(d) This section shall be operative January 1, 1998.

(Added by Stats.1993–94, 1st Ex.Sess., c. 23 (A.B.45), § 2, operative Jan. 1, 1998.)

Article 3 PROBATION COMMISSION

§ 241.1. Minor who appears to be dependent child and ward of court; initial determination of status pursuant to jointly developed written protocol; dual status children; creation of protocol

(a) Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child welfare services department shall, pursuant to a jointly developed written protocol described in subdivision (b), initially determine which status will serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court with the petition that is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. Any other juvenile court having jurisdiction over the minor shall receive notice from the court, within five calendar days, of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.

(b) The probation department and the child welfare services department in each county shall jointly develop a written protocol to ensure appropriate local coordination in the assessment of a minor described in subdivision (a), and the development of recommendations by these departments for consideration by the juvenile court. These protocols shall require, which requirements shall not be limited to, consideration of the nature of the referral, the age of the minor, the prior record of the minor's parents for child abuse, the prior record of the minor for out–of–control or delinquent behavior, the parents' cooperation with the minor's school, the minor's functioning at school, the nature of the minor's home environment, and the records of other agencies which have been involved with the minor and his or her family. The protocols also shall contain provisions for resolution of disagreements between the probation and child welfare services departments regarding the need for dependency or ward status and provisions for determining the circumstances under which a new petition should be filed to change the minor's status.

(c) Whenever a minor who is under the jurisdiction of the juvenile court of a county pursuant to Section 300, 601, or 602 is alleged to come within the description of Section 300, 601, or 602 by another county, the county probation department or child welfare services department in the county that has jurisdiction under Section 300, 601, or 602 and the county probation department or child welfare services department of the county alleging the minor to be within one of those sections shall initially determine which status will best serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court in which the petition is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. In making their recommendation to the juvenile court, the departments shall conduct an assessment consistent with the requirements of subdivision (b). Any other juvenile court having jurisdiction over the minor shall receive notice from the court in which the petition is filed within five calendar days of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.

(d) Except as provided in subdivision (e), nothing in this section shall be construed to authorize the filing of a petition or petitions, or the entry of an order by the juvenile court, to make a minor simultaneously both a dependent child and a ward of the court.

(e) Notwithstanding the provisions of subdivision (d), the probation department and the child welfare services department, in consultation with the presiding judge of the juvenile court, in any county may create a jointly written protocol to allow the county probation department and the child welfare services department to jointly assess and produce a recommendation that the child be designated as a dual status child, allowing the child to be simultaneously a dependent child and a ward of the court. This protocol shall be signed by the chief probation officer, the director of the county social services agency, and the presiding judge of the juvenile court prior to its implementation. No juvenile court may order that a child is simultaneously a dependent child and a ward of the court pursuant to this subdivision unless and until the required protocol has been created and entered into. This protocol shall include:

(1) A description of the process to be used to determine whether the child is eligible to be designated as a dual status child.

(2) A description of the procedure by which the probation department and the child welfare services department will assess the necessity for dual status for specified children and the process to make joint recommendations for the court's consideration prior to making a determination under this section. These recommendations shall ensure a seamless transition from wardship to dependency

jurisdiction, as appropriate, so that services to the child are not disrupted upon termination of the wardship.

(3) A provision for ensuring communication between the judges who hear petitions concerning children for whom dependency jurisdiction has been suspended while they are within the jurisdiction of the juvenile court pursuant to Section 601 or 602. A judge may communicate by providing a copy of any reports filed pursuant to Section 727.2 concerning a ward to a court that has jurisdiction over dependency proceedings concerning the child.

(4) A plan to collect data in order to evaluate the protocol pursuant to Section 241.2.

(5) Counties that excercise[1] the option provided for in this subdivision shall adopt either an "on–hold" system as described in subparagraph (A) or a "lead court/lead agency" system as described in subparagraph (B). In no case shall there be any simultaneous or duplicative case management or services provided by both the county probation department and the child welfare services department. It is the intent of the Legislature that judges, in cases in which more than one judge is involved, shall not issue conflicting orders.

(A) In counties in which an on–hold system is adopted, the dependency jurisdiction shall be suspended or put on hold while the child is subject to jurisdiction as a ward of the court. When it appears that termination of the court's jurisdiction, as established pursuant to Section 601 or 602, is likely and that reunification of the child with his or her parent or guardian would be detrimental to the child, the county probation department and the child welfare services department shall jointly assess and produce a recommendation for the court regarding whether the court's dependency jurisdiction shall be resumed.

(B) In counties in which a lead court/lead agency system is adopted, the protocol shall include a method for identifying which court or agency will be the lead court/lead agency. That court or agency shall be responsible for case management, conducting statutorily mandated court hearings, and submitting court reports.

(Added by Stats.1989, c. 1441, § 1. Amended by Stats.1998, c. 390 (S.B.2017), § 2; Stats.2001, c. 830 (S.B.940), § 3; Stats.2004, c. 468 (A.B.129), § 1.)

[1]So in enrolled bill.

Article 7 DEPENDENT CHILDREN TEMPORARY CUSTODY AND DETENTION

§ 319.1. Minors in need of specialized mental health treatment; notification of county mental health department

When the court finds a minor to be a person described by Section 300, and believes that the minor may need specialized mental health treatment while the minor is unable to reside in his or her natural home, the court shall notify the director of the county mental health department in the county where the minor resides. The county mental health department shall perform the duties required under Section 5694.7 for all those minors.

Nothing in this section shall restrict the provisions of emergency psychiatric services to those minors who are involved in dependency cases and have not yet reached the point of adjudication or disposition, nor shall it operate to restrict evaluations at an earlier stage of the proceedings or to restrict orders removing the minor from a detention facility for psychiatric treatment.

(Added by Stats.1985, c. 1286, § 1.6, eff. Sept. 30, 1985. Amended by Stats.1999, c. 892 (A.B.1672), § 16; Stats.2001, c. 854 (S.B.205), § 70.)

Article 9 DEPENDENT CHILDREN HEARINGS

§ 357. Holding minor in psychopathic ward of county hospital

Whenever the court, before or during the hearing on the petition, is of the opinion that the minor is mentally ill or if the court is in doubt concerning the mental health of any such person, the court may order that such person be held temporarily in the psychopathic ward of the county hospital or hospital whose services have been approved and/or contracted for by the department of health of the county, for observation and recommendation concerning the future care, supervision, and treatment of such person.

(Added by Stats.1976, c. 1068, p. 4769, § 9.)

Article 17 WARDS HEARINGS

§ 702.3. Insanity plea joined with general denial; hearings; treatment; period of commitment

Notwithstanding any other provision of law:

(a) When a minor denies, by a plea of not guilty by reason of insanity, the allegations of a petition filed pursuant to Section 602 of the Welfare and Institutions Code, and also joins with that denial a general denial of the conduct alleged in the petition, he or she shall first be subject to a hearing as if he or she had made no allegation of insanity. If the petition is sustained or if the minor denies the allegations only by reason of insanity, then a hearing shall be held on the question of whether the minor was insane at the time the offense was committed.

(b) If the court finds that the minor was insane at the time the offense was committed, the court, unless it appears to the court that the minor has fully recovered his or her sanity, shall direct that the minor be confined in a state hospital for the care and treatment of the mentally disordered or any other appropriate public or private mental health facility approved by the community program director, or the court may order the minor to undergo outpatient treatment as specified in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code. The court shall transmit a copy of its order to the community program director or his or her designee. If the allegations of the petition specifying any felony are found to be true, the court shall direct that the minor be confined in a state hospital or other public or private mental health facility approved by the community program director for a minimum of 180 days, before the minor may be released on outpatient treatment. Prior to making the order directing that the minor be confined in a state hospital or other facility or ordered to undergo outpatient treatment, the court shall order the community program director or his or her designee to evaluate the minor and to submit to the court within 15 judicial days of the order his or her written recommendation as to whether the minor should be required to undergo outpatient treatment or committed to a state hospital or another mental health facility. If, however, it shall appear to the court that the minor has fully recovered his or her sanity the minor shall be remanded to the custody of the probation department until his or her sanity shall have been finally determined in the manner prescribed by law. A minor committed to a state hospital or other facility or ordered to undergo outpatient treatment shall not be released from confinement or the required outpatient treatment unless and until the court which committed him or her shall, after notice and hearing, in the manner provided in Section 1026.2 of the Penal Code, find and determine that his or her sanity has been restored.

(c) When the court, after considering the placement recommendation for the community program director required in subdivision (b), orders that the minor be confined in a state hospital or other public or private mental health facility, the court shall provide copies of the following documents which shall be taken with the minor to the state hospital or other treatment facility where the minor is to be confined:

(1) The commitment order, including a specification of the charges.

(2) The computation or statement setting forth the maximum time of commitment in accordance with Section 1026.5 and subdivision (e).

(3) A computation or statement setting forth the amount of credit, if any, to be deducted from the maximum term of commitment.

(4) State Summary Criminal History information.

(5) Any arrest or detention reports prepared by the police department or other law enforcement agency.

(6) Any court–ordered psychiatric examination or evaluation reports.

(7) The community program director's placement recommendation report.

(d) The procedures set forth in Sections 1026, 1026.1, 1026.2, 1026.3, 1026.4, 1026.5, and 1027 of the Penal Code, and in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code, shall be applicable to minors pursuant to this section, except that, in cases involving minors, the probation department rather than the sheriff, shall have jurisdiction over the minor.

(e) No minor may be committed pursuant to this section for a period longer than the jurisdictional limits of the juvenile court, pursuant to Section 607, unless, at the conclusion of the commitment, by reason of a mental disease, defect, or disorder, he or she represents a substantial danger of physical harm to others, in which case the commitment for care and treatment beyond the jurisdictional age may be extended by proceedings in superior court in accordance with and under the circumstances specified in subdivision (b) of Section 1026.5 of the Penal Code.

(f) The provision of a jury trial in superior court on the issue of extension of commitment shall not be construed to authorize the determination of any issue in juvenile court proceedings to be made by a jury.

(Added by Stats.1978, c. 867, p. 2729, § 1. Amended by Stats.1984, c. 1415, § 3; Stats.1984, c. 1488, § 14.5; Stats.1989, c. 625, § 3.)

§ 705. Holding minor in psychopathic ward of county hospital

Whenever the court, before or during the hearing on the petition, is of the opinion that the minor is mentally disordered or if the court is in doubt concerning the mental health of any such person, the court may proceed as provided in Section 6550 of this code or Section 4011.6 of the Penal Code.

(Added by Stats.1961, c. 1616, p. 3484, § 2. Amended by Stats.1967, c. 1267, p. 3072, § 1; Stats.1976, c. 445, p. 1178, § 3, eff. July 10, 1976.)

§ 710. Mental health services recommendations; application of §§ 711 to 713

(a) Sections 711, 712, and 713 shall not be applicable in a county unless the application of those sections in the county has been approved by a resolution adopted by the board of supervisors. A county may establish a program pursuant to Section 711, 712, or 713, or pursuant to two or all three of those sections, on a permanent basis, or it may establish the program on a limited duration basis for a specific number of years. Moneys from a grant from the Mental Health Services Act[1] used to fund a program pursuant to Section 711, 712, or 713 may be used only for services related to mental health assessment, treatment, and evaluation.

(b) It is the intent of the Legislature that in a county where funding exists through the Mental Health Services Act, and the board of supervisors has adopted a resolution pursuant to subdivision (a), the courts may, under the guidelines established in Section 711, make available the evaluation described in Section 712, and receive treatment and placement recommendations from the multidisciplinary assessment team as described in Section 713.

(Added by Stats.2005, c. 265 (S.B.570), § 3.)

§ 711. Referral for mental health evaluation

(a) When it appears to the court, or upon request of the prosecutor or counsel for the minor, at any time, that a minor who is alleged to come within the jurisdiction of the court under Section 602, may have a serious mental disorder, is seriously emotionally disturbed, or has a developmental disability, the court may order that the minor be referred for evaluation, as described in Section 712.

(b) A minor, with the approval of his or her counsel, may decline the referral for mental health evaluation described in Section 712 or the multidisciplinary team review described in Section 713, in which case the matter shall proceed without the application of Sections 712 and 713, and in accordance with all other applicable provisions of law.

(Added by Stats.2005, c. 265 (S.B.570), § 4.)

§ 712. Mental health evaluator; examination; report

(a) The evaluation ordered by the court under Section 711 shall be made, in accordance with the provisions of Section 741, by an appropriate and licensed mental health professional who meets one or more of the following criteria:

(1) The person is licensed to practice medicine in the State of California and is trained and actively engaged in the practice of psychiatry.

(2) The person is licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(b) The evaluator selected by the court shall personally examine the minor, conduct appropriate psychological or mental health screening, assessment, or testing, according to a uniform protocol developed by the county mental health department and prepare and submit to the court a written report indicating his or her findings and recommendations to guide the court in determining whether the minor has a serious mental disorder or is seriously emotionally disturbed, as described in Section 5600.3, or has a developmental disability, as defined in Section 4512. If the minor is detained, the examination shall occur within three court days of the court's order of referral for evaluation, and the evaluator's report shall be submitted to the court not later than five court days after the evaluator has personally examined the minor, unless the submission date is extended by the court for good cause shown.

(c) Based on the evaluator's written report, the court shall determine whether the minor has a serious mental disorder or is seriously emotionally disturbed, as described in Section 5600.3, or has a developmental disability, as defined in Section 4512. If the court determines that the minor has a serious mental disorder, is seriously emotionally disturbed, or has a developmental disability, the case shall proceed as described in Section 713. If the court determines that the minor does not have a serious mental disorder, is not seriously emotionally disturbed, or does not have a developmental disability, the matter shall proceed without the application of Section 713 and in accordance with all other applicable provisions of law.

(d) This section shall not be construed to interfere with the legal authority of the juvenile court or of any other public or private agency or individual to refer a minor for mental health evaluation or treatment as provided in Section 370, 635.1, 704, 741, 5150, 5694.7, 5699.2, 5867.5, or 6551 of this code, or in Section 4011.6 of the Penal Code.

(Added by Stats.2005, c. 265 (S.B.570), § 5.)

§ 713. Dispositional procedures

(a) For any minor described in Section 711 who is determined by the court under Section 712 to be seriously emotionally disturbed, have a serious mental disorder, or have a developmental disability, and who is adjudicated a ward of the court under Section 602, the dispositional procedures set forth in this section shall apply.

(b) Prior to the preparation of the social study required under Section 706, 706.5, or 706.6, the minor shall be referred to a multidisciplinary team for dispositional review and recommendation. The multidisciplinary team shall consist of qualified persons who are collectively able to evaluate the minor's full range of treatment needs and may include representatives from local probation, mental health, regional centers, regional resource development projects, child welfare, education, community–based youth services, and other agencies or service providers. The multidisciplinary team shall include at least one licensed mental health professional as described in subdivision (a) of Section 712. If the minor has been determined to have both a mental disorder and a developmental disorder, the multidisciplinary team may include both an appropriate mental health agency and a regional center.

(c) The multidisciplinary team shall review the nature and circumstances of the case, including the minor's family circumstances, as well as the minor's relevant tests, evaluations, records, medical and psychiatric history, and any existing individual education plan or individual program plans. The multidisciplinary team shall provide for the involvement of the minor's available parent, guardian, or primary caretaker in its review, including any direct participation in multidisciplinary team proceedings as may be helpful or appropriate for development of a treatment plan in the case. The team shall identify the mental health or other treatment services, including in–home and community–based services that are available and appropriate for the minor, including services that may be available to the minor under federal and state programs and initiatives, such as wraparound service programs. At the conclusion of its review, the team shall then produce a recommended disposition and written treatment plan for the minor, to be appended to, or incorporated into, the probation social study presented to the court.

(d) The court shall review the treatment plan and the dispositional recommendations prepared by the multidisciplinary team and shall take them into account when making the dispositional order in the case. The dispositional order in the case shall be consistent with the protection of the public and the primary treatment needs of the minor as identified in the report of the multidisciplinary team. The minor's disposition order shall incorporate, to the extent feasible, the treatment plan submitted by the multidisciplinary team, with any adjustments deemed appropriate by the court.

(e) The dispositional order in the case shall authorize placement of the minor in the least restrictive setting that is consistent with the protection of the public and the minor's treatment needs, and with the treatment plan approved by the court. The court shall, in making the dispositional order, give preferential consideration to the return of the minor to the home of his or her family, guardian, or responsible relative with appropriate in–home, outpatient, or wraparound services, unless that action would be, in the reasonable judgment of the court, inconsistent with the need to protect the public or the minor, or with the minor's treatment needs.

(f) Whenever a minor is recommended for placement at a state developmental center, the regional center director or designee shall submit a report to the Director of the Department of Developmental Services or his or her designee. The regional center report shall include the assessments, individual program plan, and a statement describing the necessity for a developmental center placement. The Director of Developmental Services or his or her designee may, within 60 days of receiving the regional center report, submit to the court a written report evaluating the ability of an alternative community option or a developmental center to achieve the purposes of treatment for the minor and whether a developmental center placement can adequately provide the security measures or systems required to protect the public health and safety from the potential dangers posed by the minor's known behaviors.
(Added by Stats.2005, c. 265 (S.B.570), § 6.)

§ 714. Assessment or services to minors by regional centers

A regional center, as described in Chapter 5 (commencing with Section 4620) of Division 4.5, shall not be required to provide assessments or services to minors pursuant to Section 711, 712, or 713 solely on the basis of a finding by the court under subdivision (c) of Section 712 that the minor is developmentally disabled. Regional center representatives may, at their option and on a case–by–case basis, participate in the multidisciplinary teams described in Section 713. However, any assessment provided by or through a regional center to a minor determined by the court to be developmentally disabled under subdivision (c) of Section 712 shall be provided in accordance with the provisions and procedures in Chapter 5 (commencing with Section 4620) of Division 4.5 that relate to regional centers.
(Added by Stats.2005, c. 265 (S.B.570), § 7.)

WELFARE AND INSTITUTIONS CODE — MENTAL HEALTH

Division 4 MENTAL HEALTH

Part 1 GENERAL ADMINISTRATION, POWERS AND DUTIES OF THE DEPARTMENT

Chapter 1 GENERAL

§ 4000. Department

There is in the Health and Welfare Agency a State Department of Mental Health.
(Added by Stats.1977, c. 1252, p. 4482, § 486, operative July 1, 1978.)

§ 4001. Definitions

As used in this division:

(a) "Department" means the State Department of Mental Health.

(b) "Director" means the Director of Mental Health.

(c) "State hospital" means any hospital specified in Section 4100.
(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3323, § 329, operative July 1, 1973; Stats.1977, c. 1252, p. 4482, § 487, operative July 1, 1978.)

§ 4004. Director as executive officer

The department is under the control of an executive officer known as the Director of Mental Health.
(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3323, § 332, operative July 1, 1973; Stats.1977, c. 1252, p. 4483, § 492, operative July 1, 1978.)

§ 4005. Director; chief deputy; appointment; compensation; powers

With the consent of the Senate, the Governor shall appoint, to serve at his pleasure, the Director of Mental Health. He shall have the powers of a head of a department pursuant to Chapter 2 (commencing with Section 11150), Part 1, Division 3, Title 2 of the Government Code, and shall receive the salary provided for by Chapter 6 (commencing with Section 11550), Part 1, Division 3, Title 2 of the Government Code.

Upon recommendation of the director, the Governor may appoint a chief deputy director of the department who shall hold office at the pleasure of the Governor. The salary of the chief deputy director shall be fixed in accordance with law.

(Added by Stats.1977, c. 1252, p. 4483, § 493, operative July 1, 1978. Amended by Stats.1978, c. 432, p. 1499, § 8.9, eff. July 17, 1978, operative July 1, 1978.)

§ 4005.1. Rules and regulations

The department may adopt and enforce rules and regulations necessary to carry out its duties under this division.

(Added by Stats.1991, c. 89 (A.B.1288), § 4.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4005.4. Continuation of regulations

All regulations heretofore adopted by the State Department of Health pursuant to authority now vested in the State Department of Mental Health by Section 4005.1 and in effect immediately preceding the operative date of this section, shall remain in effect and shall be fully enforceable unless and until readopted, amended or repealed by the Director of Mental Health.

(Added by Stats.1977, c. 1252, p. 4483, § 496.5, operative July 1, 1978. Amended by Stats.1978, c. 429, p. 1439, § 178.5, eff. July 17, 1978, operative July 1, 1978.)

§ 4006. Grants and gifts

With the approval of the Department of Finance and for use in the furtherance of the work of the State Department of Mental Health, the director may accept any or all of the following:

(a) Grants of interest in real property.

(b) Grants of money received by this state from the United States, the expenditure of which is administered through or under the direction of any department of this state.

(c) Gifts of money from public agencies or from persons, organizations, or associations interested in the scientific, educational, charitable, or mental health fields.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1973, c. 142, p. 414, § 65.4, eff. June 30, 1973, operative July 1, 1973; Stats.1977, c. 1252, p. 4484, § 497, operative July 1, 1978; Stats.1977, c. 327, p. 1276, § 1; Stats.1978, c. 429, p. 1439, § 179, eff. July 17, 1978, operative July 1, 1978; Stats.1991, c. 89 (A.B.1288), § 7, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4007. Expenditures

The department may expend in accordance with law all money now or hereafter made available for its use, or for the administration of any statute administered by the department.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969.)

§ 4008. Travel expenses; official business

(a) The department may expend money in accordance with law for the actual and necessary travel expenses of officers and employees of the department who are authorized to absent themselves from the State of California on official business.

(b) For the purposes of this section and of Sections 11030 and 11032 of the Government Code, the following constitutes, among other purposes, official business for officers and employees of the department for which these officers and employees shall be allowed actual and necessary traveling expenses when incurred either in or out of this state upon approval of the Governor and Director of Finance:

(1) Attending meetings of any national or regional association or organization having as its principal purpose the study of matters relating to the care and treatment of mentally ill persons.

(2) Conferring with officers or employees of the United States or other states, relative to problems of institutional care, treatment or management.

(3) Obtaining information from organizations, associations, or persons described in paragraphs (1) and (2) which would be useful in the conduct of the activities of the State Department of Mental Health.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3323, § 334, operative July 1, 1973; Stats.1977, c. 1252, p. 4484, § 498, operative July 1, 1978; Stats.1991, c. 89 (A.B.1288), § 8, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4009. Employees

The department may appoint and fix the compensation of such employees as it deems necessary, subject to the laws governing civil service.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969.)

§ 4010. Applicable laws

Except as in this chapter otherwise prescribed, the provisions of the Government Code relating to state officers and departments shall apply to the State Department of Mental Health.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1973, c. 142, p. 414, § 65.5, eff. June 30, 1973, operative July 1, 1973; Stats.1977, c. 1252, p. 4484, § 499, operative July 1, 1978.)

§ 4011. Execution of laws by department

Unless otherwise indicated in this code, the State Department of Mental Health has jurisdiction over the execution of the laws relating to the care, custody, and treatment of mentally disordered persons, as provided in this code.

As used in this division, "establishment" and "institution" include every hospital, sanitarium, boarding home, or other place receiving or caring for mentally disordered persons.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3324, § 335, operative July 1, 1973; Stats.1977, c. 1252, p. 4484, § 500, operative July 1, 1978.)

§ 4011.5. State hospitals; special education and related services for individuals with exceptional needs

In counties where State Department of Mental Health hospitals are located, the state hospitals shall ensure that appropriate special education and related services, pursuant to Chapter 8 (commencing with Section 56850) of Part 30 of the Education Code, are provided eligible individuals with exceptional needs residing in state hospitals.

(Added by Stats.1980, c. 1191, p. 4001, § 5, eff. Sept. 29, 1980. Amended by Stats.1981, c. 1044, p. 4027, § 38.)

§ 4012. Powers and duties of department

The State Department of Mental Health may:

(a) Disseminate educational information relating to the prevention, diagnosis and treatment of mental disorder.

(b) Upon request, advise all public officers, organizations and agencies interested in the mental health of the people of the state.

(c) Conduct such educational and related work as will tend to encourage the development of proper mental health facilities throughout the state.

(d) Coordinate state activities involving other departments whose actions affect mentally ill persons.

(e) Coordinate with, and provide information to, other states and national organizations, on issues involving mental health.

(f) Disseminate information and federal and private foundation funding opportunities to counties and cities that administer mental health programs.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3324, § 336, operative July 1, 1973; Stats.1977, c. 1252, p. 4484, § 501, operative July 1, 1978; Stats.1991, c. 89 (A.B.1288), § 9, eff. June 30, 1991; Stats.1991, c. 611 (A.B.1491), § 15, eff. Oct. 7, 1991.)

§ 4012.5. Aftercare services for patients on leave from state hospitals; contracts

The State Department of Mental Health may obtain psychiatric, medical and other necessary aftercare services for judicially committed patients on leave of absence from state hospitals by contracting with any city, county, local health district, or other public officer or agency, or with any private person or agency to furnish such services to patients in or near the home community of the patient. Any city, county, local health district, or other public officer or agency authorized by law to provide mental health and aftercare services is authorized to enter such contracts.

(Added by Stats.1968, c. 1374, p. 2637, § 5, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3324, § 337, operative July 1, 1973; Stats.1977, c. 1252, p. 4485, § 502, operative July 1, 1978.)

§ 4015. Persons who have died while residing at state hospitals and developmental centers; inventory of materials and records to create record; location of gravesites; names of patients who donated remains for medical research; restoration of gravesites and cemeteries; protocol for future interment of patients who die while residing in state hospital or developmental center; creation of task force; status update on implementation

(a) The State Department of Mental Health shall, in coordination with the task force described in subdivision (c) and with other state entities, including, but not limited to, the Department of General Services, the State Department of Developmental Services, the Secretary of State, and the California State Library, do all of the following:

(1) Conduct and complete inventories of all of the following:

(A) All materials and records necessary to create the most complete record of persons who died while residing at any state hospital as defined in Section 7200, or any developmental center as defined in Section 4440.

(B) Within existing resources, identify the location of all gravesites at existing state hospitals and developmental center lands and of gravesites not located on state lands but designated by the state for burial of state hospital or developmental center residents. This shall include the location of remains that may have been moved from their original burial site and the location of grave markers that may have been moved from gravesites.

(C) Within existing resources, identify the names of patients whose remains were donated for medical research, the entity to which the remains were donated, and the final disposition of those remains.

(2) Assist and cooperate with the California Memorial Project in conducting research regarding the records of deaths and burials of persons at state hospitals and developmental centers and cemeteries based on the grounds of these facilities. This assistance shall, subject to paragraph (3), include the granting of access to those state records as necessary to perform the inventories described in this section.

(3) Notwithstanding Sections 4514 and 5328 or any other provision of law regarding confidentiality of patient records, the information described in this section shall be limited to the name, date of birth, date of death, and photographic images of any person who died while in residency at any state hospital or developmental center and shall be made available for the purposes of the implementation of this section. The exportation and use of these records or photographic images from state facilities shall be limited to the information delineated within, and the purposes of, this section.

(4) Assist the California Memorial Project in developing a plan for the restoration of gravesites and cemeteries at state hospitals and developmental centers and gravesites not located on state lands but designated by the state for burial of state hospital or developmental center residents.

(5) Develop a protocol for the future interment of patients who die while residing at a state hospital or developmental center and are unclaimed by a family member.

(b) The department may develop a protocol to coordinate the efforts of the state entities described in subdivision (a).

(c)(1) The department shall establish a task force to provide leadership and direction in carrying out the activities described in this section. The task force shall consist of representatives selected by each of the following entities:

(A) The Peer Self–Advocacy Unit of Protection and Advocacy, Inc.

(B) California Network of Mental Health Clients.

(C) Capitol People First.

(2) To the extent that funding is available, task force members shall be reimbursed for necessary travel expenses associated with serving on the task force. When requested by a task force member with a disability, the state shall pay the cost of a facilitator chosen by the task force member.

(d) In implementing this section, the state shall make no structural changes to existing gravesites on state hospital or developmental center lands prior to the submission of, and which do not conform with, the restoration plan described in paragraph (4) of subdivision (a).

(e) The department shall submit a status update on the implementation of this section, including a description of barriers, if any, to conducting the activities described in this section, to the Legislature by January 31, 2004.

(Added by Stats.2002, c. 440 (S.B.1448), § 2. Amended by Stats.2003, c. 62 (S.B.600), § 322.)

§ 4016. Right to examine copies of code

In every place in which a mentally disordered person may be involuntarily held, the persons confined therein shall be permitted access to and examination or inspection of copies of this code.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969.)

§ 4017. Resources and services

(a) The department may provide information to the Controller to guide distribution of resources dedicated for mental health services under Chapter 6 (commencing with Section 17600) of Part 5 of Division 9, and may distribute to a county or combination of counties acting jointly resources described in Part 2 (commencing with Section 5600) of Division 5, pursuant to Section 5701.

(b) The department may contract with a county or combination of counties for services described in this division and Division 5 (commencing with Section 5000), to the extent that those services are funded directly by the department.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2638, § 6, operative July 1, 1969; Stats.1970, c. 1627, p. 3440, § 4.5; Stats.1985, c. 106, § 174; Stats.1991, c. 89 (A.B.1288), § 16, eff. June 30, 1991; Stats.1991, c. 611 (A.B.1491), § 16, eff. Oct. 7, 1991.)

§ 4021. Investigatory powers; notice to attorney general

When the department has reason to believe that any person held in custody as mentally disordered is wrongfully deprived of his liberty, or is cruelly or negligently treated, or that inadequate provision is made for the skillful medical care, proper supervision, and safekeeping of any such person, it may ascertain the facts. It may issue compulsory process for the attendance of witnesses and the production of papers, and may exercise the powers conferred upon a referee in a superior court. It may make such orders for the care and treatment of such person as it deems proper.

Whenever the department undertakes an investigation into the general management and administration of any establishment or place of detention for the mentally disordered, it may give notice of such investigation to the Attorney General, who shall appear personally or by deputy, to examine witnesses in attendance and to assist the department in the exercise of the powers conferred upon it in this code.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1977, c. 1252, p. 4486, § 506, operative July 1, 1978; Stats.1978, c. 429, p. 1440, § 180, eff. July 17, 1978, operative July 1, 1978.)

§ 4022. Complaints; verification; service; notice

When complaint is made to the department regarding the officers or management of any hospital or institution for the mentally disordered, or regarding the management of any person detained therein or regarding any person held in custody as mentally disordered, the department may, before making an examination regarding such complaint, require it to be made in writing and sworn to before an officer authorized to administer oaths. On receipt of such a complaint, sworn to if so required, the department shall direct that a copy of the complaint be served on the authorities of the hospital or institution or the person against whom complaint is made, together with notice of the time and place of the investigation, as the department directs.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1977, c. 1252, p. 4486, § 507, operative July 1, 1978.)

§ 4024. Review and approval of proposed allocations for level–of–care staffing in state hospitals serving persons with mental disabilities; assumptions underlying estimates of state hospital mentally disabled population; comparison of actual and estimated population levels; analysis of causes of change and fiscal impact

The State Department of Mental Health proposed allocations for level–of–care staffing in state hospitals that serve persons with mental disabilities shall be submitted to the Department of Finance for review and approval in July and again on a quarterly basis. Each quarterly report shall include an analysis of client characteristics of admissions and discharges in addition to information on any changes in characteristics of current residents.

The State Department of Mental Health shall submit by January 1 and May 1 to the Department of Finance for its approval: (a) all assumptions underlying estimates of state hospital mentally disabled population; and (b) a comparison of the actual and estimated population levels for the year to date. If the actual population differs from the estimated population by 50 or more, the department shall include in its reports an analysis of the causes of the change and the fiscal impact. The Department of Finance shall approve or modify the assumptions underlying all population estimates within 15 working days of their submission. If the Department of Finance does not approve or modify the assumptions by such date, the assumptions, as presented by the submitting department, shall be deemed to be accepted by the Department of Finance as of that date. The estimates of populations and the comparison of actual versus estimated population levels shall be made available to the Joint Legislative Budget Committee immediately following approval by the Department of Finance.

The Department of Finance shall also make available to the Joint Legislative Budget Committee a listing of all of the approved assumptions and the impact of each assumption, as well as all supporting data provided by the State Department of Mental Health or developed independently by the Department of Finance. However, such departmental estimates, assumptions, and other supporting data as have been prepared shall be forwarded to the Joint Legislative Budget Committee not later than January 15 or May 15 by the State Department of Mental Health in the event this information has not been released earlier.

(Added by Stats.1984, c. 268, § 33, eff. June 30, 1984.)

§ 4024.5. Multiple diagnoses; treatment; combined funding; plan

(a) The State Department of Mental Health and the State Department of Alcohol and Drug Programs, jointly, shall develop a plan, by July 1, 1994, to appropriately combine funding from both departments for the treatment of persons with multiple diagnoses.

(b) For purposes of this section, “multiple diagnoses” means diagnoses of chronic mental illness together with substance abuse of either illegal or legal drugs, including alcohol, or both.

(Added by Stats.1990, c. 845 (A.B.3054), § 1.)

§ 4025. Limit on charges; care; care treatment

Charges made by the department for the care and treatment of each patient in a facility maintained by the department shall not exceed the actual cost thereof as determined by the director in accordance with standard accounting practices. The director is not prohibited from including the amount of expenditures for capital outlay or the interest thereon, or both, in his determination of actual cost.

As used in this section, the terms “care” and “care and treatment” include care, treatment, support, maintenance, and other services rendered by the department to a patient in the state hospital or other facility maintained by or under the jurisdiction of the department.

(Added by Stats.1968, c. 1374, p. 2638, § 8, operative July 1, 1969.)

§ 4027. Regulations concerning inpatient rights of certain mentally ill offenders

The State Department of Mental Health may adopt regulations concerning patients’ rights and related procedures applicable to the inpatient treatment of mentally ill offenders receiving treatment pursuant to Sections 1026, 1026.2, 1364, 1370, 1610, and 2684 of the Penal Code, Section 1756 of the Welfare and Institutions Code, persons receiving treatment as mentally disordered sex offenders, and inmates of jail psychiatric units.

(Added by Stats.1986, c.933, § 1.)

Chapter 2 PLANNING, RESEARCH, EVALUATION AND QUALITY ASSURANCE

Article 1 PLANNING, RESEARCH, EVALUATION AND QUALITY ASSURANCE

§ 4030. Organization of staff to assure implementation

The Director of Mental Health shall organize appropriate staff of the department to ensure implementation of the planning, research, evaluation, technical assistance, and quality assurance responsibilities set forth in this chapter.

(Added by Stats.1978, c. 1393, p. 4608, § 2. Amended by Stats.1991, c. 89 (A.B.1288), § 19, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4031. Duties of state department of mental health

The State Department of Mental Health shall, to the extent resources are available, do all of the following:

(a) Conduct, sponsor, coordinate, and disseminate results of research and evaluation directed to the public policy issues entailed in the selection of resource utilization and service delivery in the state.

(b) Make available technical assistance to local mental health programs incorporating the results of research, evaluation, and quality assurance to local mental health programs.

(c) Implement a system of required performance reporting by local mental health programs.

(d) Perform any other activities useful to improving and maintaining the quality of state mental hospital and community mental health programs.

(Added by Stats.1978, c. 1393, p. 4608, § 2. Amended by Stats.1991, c. 89 (A.B.1288), § 20, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4032. Grants and contracts; giving and receipt

The department shall, when appropriate, give and receive grants and contracts for research, evaluation, and quality assurance efforts.
(Added by Stats.1978, c. 1393, p. 4608, § 2.)

§ 4033. Federal planning requirements; compliance by state

(a) The State Department of Mental Health shall, to the extent resources are available, comply with federal planning requirements. The department shall update and issue a state plan, which may also be any federally required state service plan, so that citizens may be informed regarding the implementation of, and long–range goals for, programs to serve mentally ill persons in the state. The department shall gather information from counties necessary to comply with this section.

(b)(1) If the State Department of Mental Health makes a decision not to comply with any federal planning requirement to which this section applies, the State Department of Mental Health shall submit the decision, for consultation, to the California Conference of Local Mental Health Directors, the California Council on Mental Health, and affected mental health entities.

(2) The State Department of Mental Health shall not implement any decision not to comply with federal planning requirements sooner than 30 days after notification of that decision, in writing, by the Department of Finance, to the chairperson of the committee in each house of the Legislature which considers appropriations, and the Chairperson of the Joint Legislative Budget Committee.
(Added by Stats.1991, c. 89 (A.B.1288), § 21, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 17, eff. Oct. 7, 1991.)

Article 2 RESEARCH AND EVALUATION

§ 4040. Clinical research or evaluation studies

The State Department of Mental Health may conduct, or contract for, research or evaluation studies which have application to policy and management issues. In selecting areas for study the department shall be guided by the information needs of state and local policymakers and managers, and suggestions from the California Conference of Local Mental Health Directors.
(Added by Stats.1978, c. 1393, p. 4608, § 2. Amended by Stats.1991, c. 89 (A.B.1288), § 22, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4041. Clearinghouse for information; review and dissemination of results

The department shall serve as a clearinghouse for information on research and evaluation studies relevant to mental health. The department shall review and disseminate the results of local, state, and national research and evaluation studies that have important implications for mental health policy or management.
(Added by Stats.1978, c. 1393, p. 4608, § 2.)

§ 4042. Cooperation and coordination with other state and local agencies

The department shall cooperate and coordinate with other state and local agencies engaged in research and evaluation studies. Effort shall be made to coordinate with research, evaluation, and demonstration efforts of local mental health programs, state hospitals serving the mentally disordered, the Department of Rehabilitation, the State Department of Alcohol and Drug Programs, the State Department of Developmental Services, the State Department of Health Services, universities, and other special projects conducted or contracted for by the State Department of Mental Health.
(Added by Stats.1978, c. 1393, p. 4608, § 2. Amended by Stats.1991, c. 89 (A.B.1288), § 23, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4043. Mental health research projects; intent; priorities

(a) It is the intent of the Legislature that the department provide leadership in the establishment and funding of mental health research projects. The projects shall lead to better understanding of the etiology of serious mental illness and the development of treatment alternatives necessary to meet the needs of the citizens of this state.

(b) The director shall appoint a Mental Health Research Advisory Committee. The committee shall consult with program administrators, providers, consumers, families, and research scientists. The committee shall advise and assist the director in establishing research priorities and in other research related activities as appropriate.
(Added by Stats.1991, c. 89 (A.B.1288), § 24, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4044. Research priorities; funding

Research performed pursuant to this chapter shall have as a priority serious mental disorders. Research shall be conducted in, or in collaboration with, state or local mental health program facilities that serve public needs. In order to preserve continuity, research programs may be funded for up to five years depending upon the nature of the project and availability of funds.
(Added by Stats.1991, c. 89 (A.B.1288), § 25, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4045. County requests for funds

In order to improve the quality of mental health care in this state, a portion of the funding for research pursuant to this chapter shall be used to provide technical advice, consultation, and education on diagnosis and treatment within the public mental health system upon request of a county.
(Added by Stats.1991, c. 89 (A.B.1288), § 26, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

Article 3 TECHNICAL ASSISTANCE

§ 4050. Availability to county and other local mental health agencies

The State Department of Mental Health shall provide, to the extent resources are available, technical assistance, through its own staff, or by contract, to county mental health programs and other local mental health agencies in the areas of program operations, research, evaluation, demonstration, or quality assurance projects.
(Added by Stats.1978, c. 1393, p. 4608, § 2. Amended by Stats.1991, c. 89 (A.B.1288), § 27, eff. June 30, 1991; Stats.1991, c. 611 (A.B.1491), § 18, eff. Oct. 7, 1991.)

§ 4051. Guidelines, models and operational assistance

The State Department of Mental Health shall, to the extent resources are available, provide program development guidelines, evaluation models, and operational assistance on all aspects of services to mentally ill persons of all ages. These services include, but are not limited to, the following:

(a) Self–help programs.
(b) Housing development.
(c) Disaster preparation.
(d) Vocational services.
(e) Regional programs.
(f) Multiple diagnosis programs.
(Added by Stats.1991, c. 89 (A.B.1288), § 28, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4052. Training

The State Department of Mental Health shall, to the extent resources are available, provide training in performance standards, model programs, cultural competency, and program development.
(Added by Stats.1991, c. 89 (A.B.1288), § 29, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4060. Joint state–county decisionmaking process; implementation of § 4050

The department shall, in order to implement Section 4050, utilize a joint state–county decisionmaking process that shall include local mental health directors and representatives of local mental health boards. The purpose of this collaboration shall be to promote effective and efficient quality mental health services to the residents of the state under the realigned mental health system.
(Added by Stats.1992, c. 1374 (A.B.14), § 2, eff. Oct. 28, 1992. Amended by Stats.1993, c. 564 (S.B.43), § 1.)

§ 4061. Joint state–county decisionmaking process; areas of use; inclusion of mental health board members; resources

(a) The department shall utilize a joint state–county decisionmaking process to determine the appropriate use of state and local training, technical assistance, and regulatory resources to meet the mission and goals of the state's mental health system. The department shall use the decisionmaking collaborative process required by this section in all of the following areas:

(1) Provide technical assistance to the State Department of Mental Health and local mental health departments through direction of existing state and local mental health staff and other resources.

(2) Analyze mental health programs, policies, and procedures.

(3) Provide forums on specific topics as they relate to the following:

(A) Identifying current level of services.

(B) Evaluating existing needs and gaps in current services.

(C) Developing strategies for achieving statewide goals and objectives in the provision of services for the specific area.

(D) Developing plans to accomplish the identified goals and objectives.

(4) Providing forums on policy development and direction with respect to mental health program operations and clinical issues.

(b) Local mental health board members shall be included in discussions pursuant to Section 4060 when the following areas are discussed:

(1) Training and education program recommendations.

(2) Establishment of statewide forums for all organizations and individuals involved in mental health matters to meet and discuss program and policy issues.

(3) Distribution of information between the state, local programs, local mental health boards, and other organizations as appropriate.

(c) The State Department of Mental Health and local mental health departments may provide staff or other resources, including travel reimbursement, for consultant and advisory services; for the training of personnel, board members, or consumers and families in state and local programs and in educational institutions and field training centers approved by the department; and for the establishment and maintenance of field training centers.
(Added by Stats.1992, c. 1374 (A.B.14), § 3, eff. Oct. 28, 1992.)

Article 4 MEDI–CAL QUALITY ASSURANCE

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4070. Development of quality assurance program; standards and guidelines

(a) The State Department of Mental Health shall develop a quality assurance program to govern the delivery of Short–Doyle Medi–Cal services, in order to assure quality patient care based on community standards of practice.

(b) The department shall issue standards and guidelines for local quality assurance activities. These standards and guidelines shall be reviewed and revised in consultation with the Conference of Local Mental Health Directors. The standards and guidelines shall be based on federal medicaid requirements.

(c) The standards and guidelines developed by the department shall reflect the special problems that small rural counties have in undertaking comprehensive quality assurance systems.
(Added by Stats.1978, c. 1393, p. 4608, § 2. Amended by Stats.1991, c. 89 (A.B.1288), § 32, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4071. Approval of each local program

The department shall approve each local program's initial quality assurance plan, and shall thereafter review and approve each program's Short–Doyle Medi–Cal quality assurance plan whenever the plan is amended or changed.
(Added by Stats.1978, c. 1393, p. 4608, § 2. Amended by Stats.1991, c. 89 (A.B.1288), § 33, eff. June 30, 1991; Stats.1991, c. 611 (A.B.1491), § 19, eff. Oct. 7, 1991.)

Chapter 3 FACILITY LICENSING, PROGRAM CERTIFICATION, AND RATESETTING

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

Article 1 LICENSING AND RATESETTING ASSESSMENT

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4074. Assessment of need

To the extent resources are available, the department shall utilize state and federal laws, research findings, and information collected for county programs to assess the need for licensing and ratesetting activities statewide. County competition, including practices which supplement rates to ensure access, are an indicator of the need for revised ratesetting activities.
(Added by Stats.1991, c. 89 (A.B.1288), § 37, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

Article 2 PRIVATE RESIDENTIAL CARE FACILITIES

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4075. Payment for special needs of mentally disordered persons; rates; eligibility criteria; establishment of standardized assessment tool and client monitoring system

The department shall establish and maintain an equitable system of payment for the special needs of mentally disordered persons in private residential care facilities for the mentally disabled as follows:

(a) The department shall establish the rates of payment which shall be based on the functional ability and programmatic needs of clients. The department shall establish a standardized assessment tool and client monitoring system for counties to use in determining the functional ability and programmatic needs of mentally disordered clients pursuant to this chapter.

(b) The department shall adopt regulations necessary to establish eligibility criteria for private residential care facilities, including, but not limited to, training and educational requirements for facility operators and staff and ability to meet specified special needs of clients.

(c) The department shall establish rates annually in consultation with the California Conference of Local Mental Health Directors and provider groups. These rates shall include, but not be limited to, each of the cost elements in this section as follows:

(1) Rates established for all facilities shall include an adequate amount to care for basic living needs of a mentally disordered person. "Basic living needs" are defined to include housing, including shelter, utilities, and furnishings; food; and personal care. These amounts may be adjusted annually to reflect cost–of–living changes. A redetermination of basic living costs shall be undertaken every three years by the department using the best available estimating methods.

(2) To the extent applicable, rates established for facilities shall include a reasonable amount for unallocated services. These costs shall be determined using generally accepted accounting principles. "Unallocated services," for the purposes of this section, means the indirect costs of managing a facility and includes costs of managerial personnel, facility operation, maintenance and repair, employee benefits, taxes, interest, insurance, depreciation, and general and administrative support. If a facility serves other persons in addition to mentally disordered persons, unallocated services expenses shall be reimbursed under this section, only for the proportion of the costs associated with the care of mentally disordered persons.

(3) Rates established for facilities shall include an amount to reimburse facilities for the depreciation of mandated capital improvements and equipment as established in the state's uniform accounting manual. For purposes of this section, "mandated capital improvements and equipment" are only those remodeling and equipment costs incurred by a facility because an agency of government has required the remodeling or equipment as a condition for the use of the facility as a provider of care to mentally disordered persons.

(4) To the extent applicable, rates established for all facilities shall include as a factor an amount to reflect differences in the cost of living for different geographic areas in the state.

(5) Rates established for facilities shall include an amount for supervision where the functional ability or programmatic needs of residents require augmented supervisory staff.

(6) Rates of payment for private residential care facilities shall be established in such ways as to ensure the maximum utilization of all federal and other sources of funding, to which mentally disordered persons are legally entitled, prior to the commitment of state funds for those purposes.

(d) In no case shall the rates established under this section be less than the rates paid for equivalent categories of regional center clients which were in effect on July 1, 1985.

(Added by Stats.1979, c. 1194, p. 4700, § 2, eff. Sept. 30, 1979. Amended by Stats.1982, c. 115, § 41, eff. March 13, 1982; Stats.1985, c. 1352, § 2, eff. Oct. 1, 1985; Stats.1991, c. 89 (A.B.1288), § 39, eff. June 30, 1991; Stats.1991, c. 611 (A.B.1491), § 20, eff. Oct. 7, 1991.)

§ 4076. Contracts for additional services; payment rate system

Counties which contract with private residential care facilities for additional services for mentally disabled persons involving payment of supplemental rates shall utilize the payment rate system and facility guidelines for residential care facilities established pursuant to this chapter.

(Added by Stats.1991, c. 89 (A.B.1288), § 41, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4078. Licensing of facilities

Facilities funded by contract for supplemental rates in accordance with this chapter shall be licensed under existing licensing categories, including provisional licenses.

(Added by Stats.1979, c. 1194, p. 4700, § 2, eff. Sept. 30, 1979. Amended by Stats.1991, c. 89 (A.B.1288), § 43, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

Article 3 PSYCHIATRIC HEALTH FACILITIES

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4080. Licensing of facilities; review; standards; penalties

(a) Psychiatric health facilities, as defined in Section 1250.2 of the Health and Safety Code, shall only be licensed by the State Department of Mental Health subsequent to application by counties, county contract providers, or other organizations pursuant to this part.

(b)(1) For counties or county contract providers that choose to apply, the local mental health director shall first present to the local mental health advisory board for its review an explanation of the need for the facility and a description of the services to be provided. The local mental health director shall then submit to the governing body the explanation and description. The governing body, upon its approval, may submit the application to the State Department of Mental Health.

(2) Other organizations that will be applying for licensure and do not intend to use any Bronzan–McCorquodale funds pursuant to Section 5707 shall submit to the local mental health director and the governing body in the county in which the facility is to be located a written and dated proposal of the services to be provided. The local mental health director and governing body shall have 30 days during which to provide any advice and recommendations regarding licensure, as they deem appropriate. At any time after the 30–day period, the organizations may then submit their applications, along with the mental health director's and governing body's advice and recommendations, if any, to the State Department of Mental Health.

(c) The State Fire Marshal and other appropriate state agencies, to the extent required by law, shall cooperate fully with the State Department of Mental Health to ensure that the State Department of Mental Health approves or disapproves the licensure applications not later than 90 days after the application submission by a county, county contract provider, or other organization.

(d) Every psychiatric health facility and program for which a license has been issued shall be periodically inspected by a multidisciplinary team appointed or designated by the State Department of Mental Health. The inspection shall be conducted no less than once every two years and as often as necessary to ensure the quality of care provided. During the inspections the review team shall offer such advice and assistance to the psychiatric health facility as it deems appropriate.

(e)(1) The program aspects of a psychiatric health facility that shall be reviewed and may be approved by the State Department of Mental Health shall include, but not be limited to:

(A) Activities programs.

(B) Administrative policies and procedures.

(C) Admissions, including provisions for a mental evaluation.

(D) Discharge planning.

(E) Health records content.

(F) Health records services.

(G) Interdisciplinary treatment teams.

(H) Nursing services.

(I) Patient rights.

(J) Pharmaceutical services.

(K) Program space requirements.

(L) Psychiatrist and clinical psychological services.

(M) Rehabilitation services.

(N) Restraint and seclusion.

(O) Social work services.

(P) Space, supplies, and equipment.

(Q) Staffing standards.

(R) Unusual occurrences.

(S) Use of outside resources, including agreements with general acute care hospitals.

(T) Linguistic access and cultural competence.

(U) Structured outpatient services to be provided under special permit.

(2) The State Department of Mental Health has the sole authority to grant program flexibility.

(f) The State Department of Mental Health shall adopt regulations that shall include, but not be limited to, all of the following:

(1) Procedures by which the State Department of Mental Health shall review and may approve the program and facility requesting licensure as a psychiatric health facility as being in compliance with program standards established by the department.

(2) Procedures by which the Director of Mental Health shall approve, or deny approval of, the program and facility licensed as a psychiatric health facility pursuant to this section.

(3) Provisions for site visits by the State Department of Mental Health for the purpose of reviewing a facility's compliance with program and facility standards.

(4) Provisions for the State Department of Mental Health for any administrative proceeding regarding denial, suspension, or revocation of a psychiatric health facility license.

(5) Procedures for the appeal of an administrative finding or action pursuant to paragraph (4) of this subdivision and subdivision (j).

(g) Regulations shall be adopted by the State Department of Mental Health, which shall establish standards for pharmaceutical services in psychiatric health facilities. Licensed psychiatric health facilities shall be exempt from requirements to obtain a separate pharmacy license or permit.

(h)(1) It is the intent of the Legislature that the State Department of Mental Health shall license the facility in order to establish innovative and more competitive and specialized acute care services.

(2) The State Department of Mental Health shall review and may approve the program aspects of public or private facilities, with the exception of those facilities that are federally certified or accredited by a nationally recognized commission that accredits health care facilities, only if the average per diem charges or costs of service provided in the facility is approximately 60 percent of the average per diem charges or costs of similar psychiatric services provided in a general hospital.

(3)(A) When a private facility is accredited by a nationally recognized commission that accredits health care facilities, the department shall review and may approve the program aspects only if the average per diem charges or costs of service provided in the facility do not exceed approximately 75 percent of the average per diem charges or costs of similar psychiatric service provided in a psychiatric or general hospital.

(B) When a private facility serves county patients, the department shall review and may approve the program aspects only if the facility is federally certified by the Health Care Financing Administration and serves a population mix that includes a proportion of Medi–Cal patients sufficient to project an overall cost savings to the county, and the average per diem charges or costs of service provided in the facility do not exceed approximately 75 percent of the average per diem charges or costs of similar psychiatric service provided in a psychiatric or general hospital.

(4) When a public facility is federally certified by the Health Care Financing Administration and serves a population mix that includes a proportion of Medi–Cal patients sufficient to project an overall program cost savings with certification, the department shall approve the program aspects only if the average per diem charges or costs of service provided in the facility do not exceed approximately 75 percent of the average per diem charges or costs of similar psychiatric service provided in a psychiatric or general hospital.

(5)(A) The State Department of Mental Health may set a lower rate for private or public facilities than that required by paragraph (3) or paragraph (4), respectively if so required by the federal Health Care Financing Administration as a condition for the receipt of federal matching funds.

(B) This section does not impose any obligation on any private facility to contract with a county for the provision of services to Medi–Cal beneficiaries, and any contract for that purpose is subject to the agreement of the participating facility.

(6)(A) In using the guidelines specified in this subdivision, the department shall take into account local conditions affecting the costs or charges.

(B) In those psychiatric health facilities authorized by special permit to offer structured outpatient services not exceeding 10 daytime hours, the following limits on per diem rates shall apply:

(i) The per diem charge for patients in both a morning and an afternoon program on the same day shall not exceed 60 percent of the facility's authorized per diem charge for inpatient services.

(ii) The per diem charge for patients in either a morning or afternoon program shall not exceed 30 percent of the facility's authorized per diem charge for inpatient services.

(i) The licensing fees charged for these facilities shall be credited to the State Department of Mental Health for its costs incurred in the review of psychiatric health facility programs, in connection with the licensing of these facilities.

(j)(1) The State Department of Mental Health shall establish a system for the imposition of prompt and effective civil sanctions against psychiatric health facilities in violation of the laws and regulations of this state pertaining to psychiatric health facilities. If the State Department of Mental Health determines that there is or has been a failure, in a substantial manner, on the part of a psychiatric health facility to comply with the laws and regulations, the director may impose the following sanctions:

(A) Cease and desist orders.

(B) Monetary sanctions, which may be imposed in addition to the penalties of suspension, revocation, or cease and desist orders. The amount of monetary sanctions permitted to be imposed pursuant to this subparagraph shall not be less than fifty dollars ($50) nor more than one hundred dollars ($100) multiplied by the licensed bed

capacity, per day, for each violation. However, the monetary sanction shall not exceed three thousand dollars ($3,000) per day. A facility that is assessed a monetary sanction under this subparagraph, and that repeats the deficiency, may, in accordance with the regulations adopted pursuant to this subdivision, be subject to immediate suspension of its license until the deficiency is corrected.

(2) The department shall adopt regulations necessary to implement this subdivision and paragraph (5) of subdivision (f) in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). No later than January 1, 1998, the department shall adopt emergency regulations necessary to implement this subdivision and paragraph (5) of subdivision (f) in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). This initial adoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. These emergency regulations shall remain in effect for no more than 180 days. The certificate of compliance, as provided for in subdivision (e) of Section 11346.1 of the Government Code, for the emergency regulations adopted pursuant to this paragraph shall be submitted to the Office of Administrative Law no later than July 1, 1998.

(k) Proposed changes in the standards or regulations affecting health facilities that serve the mentally disordered shall be effected only with the review and coordination of the Health and Welfare Agency.

(*l*) In psychiatric health facilities where the clinical director is not a physician, a psychiatrist, or if one is temporarily not available, a physician shall be designated who shall direct those medical treatments and services that can only be provided by, or under the direction of, a physician.

(Added by Stats.1991, c. 89 (A.B.1288), § 44, eff. June 30, 1991. Amended by Stats.1992, c. 4 (A.B.1902), § 3; Stats.1992, c. 1374 (A.B.14), § 4, eff. Oct. 28, 1992; Stats.1994, c. 329 (S.B.894), § 1; Stats.1996, c. 245 (A.B.2616), § 2, eff. July 22, 1996; Stats.1996, c. 403 (S.B.1608), § 1.)

Article 4 SOCIAL REHABILITATION FACILITIES AND COMMUNITY RESIDENTIAL TREATMENT PROGRAMS

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4090. Standards for residential treatment programs and facilities

(a) The State Department of Mental Health shall establish, by regulation, standards for the programs listed in Chapter 2.5 (commencing with Section 5670) of Part 2 of Division 5. These standards shall also be applied by the department to any facility licensed as a social rehabilitation facility pursuant to paragraph (7) of subdivision (a) of Section 1502 of the Health and Safety Code.

(b) In establishing the standards required by this section, the department shall not establish standards which in themselves impose any new or increased costs on the programs or facilities affected by the standards.

(Added by Stats.1991, c. 89 (A.B.1288), § 46, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4091. Evaluation and enforcement of standards; delegation

Nothing in Section 4090 limits the authority of the State Department of Mental Health to delegate the evaluation and enforcement of the program standards to a county mental health program when a licensed social rehabilitation facility has a contractual relationship with a county mental health program and the county has requested the delegation.

(Added by Stats.1991, c. 89 (A.B.1288), § 46, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 21, eff. Oct. 7, 1991; Stats.1992, c. 1374 (A.B.14), § 5, eff. Oct. 28, 1992.)

Article 5 PROGRAMS FOR SERIOUSLY EMOTIONALLY DISTURBED CHILDREN AND COURT WARDS AND DEPENDENTS

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4094. Program standards; compliance; delegation of certification and supervision; regulations; admission of minors

(a) The State Department of Mental Health shall establish, by regulations adopted at the earliest possible date, but no later than December 31, 1994, program standards for any facility licensed as a community treatment facility. This section shall apply only to community treatment facilities described in this subdivision.

(b) A certification of compliance issued by the State Department of Mental Health shall be a condition of licensure for the community treatment facility by the State Department of Social Services. The department may, upon the request of a county, delegate the certification and supervision of a community treatment facility to the county department of mental health.

(c) The State Department of Mental Health shall adopt regulations to include, but not be limited to, the following:

(1) Procedures by which the Director of Mental Health shall certify that a facility requesting licensure as a community treatment facility pursuant to Section 1502 of the Health and Safety Code is in compliance with program standards established pursuant to this section.

(2) Procedures by which the Director of Mental Health shall deny a certification to a facility or decertify a facility that is licensed as a community treatment facility pursuant to Section 1502 of the Health and Safety Code, but no longer complying with program standards established pursuant to this section, in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) Provisions for site visits by the State Department of Mental Health for the purpose of reviewing a facility's compliance with program standards established pursuant to this section.

(4) Provisions for the community care licensing staff of the State Department of Social Services to report to the State Department of Mental Health when there is reasonable cause to believe that a community treatment facility is not in compliance with program standards established pursuant to this section.

(5) Provisions for the State Department of Mental Health to provide consultation and documentation to the State Department of Social Services in any administrative proceeding regarding denial, suspension, or revocation of a community treatment facility license.

(d) The standards adopted by regulations pursuant to subdivision (a) shall include, but not be limited to, standards for treatment, staffing, and for the use of psychotropic medication, discipline, and restraints in the facilities. The standards shall also meet the requirements of Section 4094.5.

(e)(1) Until January 1, 2007, all of the following are applicable:

(A) A community treatment facility shall not be required by the State Department of Mental Health to have 24–hour onsite licensed nursing staff, but shall retain at least one full–time, or full–time equivalent, registered nurse onsite if both of the following are applicable:

(i) The facility does not use mechanical restraint.

(ii) The facility only admits children who have been assessed, at the point of admission, by a licensed primary care provider and a licensed psychiatrist, who have concluded, with respect to each child, that the child does not require medical services that require 24–hour nursing coverage. For purposes of this section, a "primary care provider" includes a person defined in Section 14254, or a nurse practitioner who has the responsibility for providing initial and primary care to patients, for maintaining the continuity of care, and for initiating referral for specialist care.

(B) Other medical or nursing staff shall be available on call to provide appropriate services, when necessary, within one hour.

(C) All direct care staff shall be trained in first aid and cardiopulmonary resuscitation, and in emergency intervention techniques and methods approved by the Community Care Licensing Division of the State Department of Social Services.

(2) The State Department of Mental Health may adopt emergency regulations as necessary to implement this subdivision. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall be exempt from review by the Office of Administrative Law and shall become effective immediately upon filing with the Secretary of State. The regulations shall not remain in effect more than 180 days unless the adopting agency complies with all the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

(f) During the initial public comment period for the adoption of the regulations required by this section, the community care facility licensing regulations proposed by the State Department of Social Services and the program standards proposed by the State Department of Mental Health shall be presented simultaneously.

(g) A minor shall be admitted to a community treatment facility only if the requirements of Section 4094.5 and either of the following conditions are met:

(1) The minor is within the jurisdiction of the juvenile court, and has made voluntary application for mental health services pursuant to Section 6552.

(2) Informed consent is given by a parent, guardian, conservator, or other person having custody of the minor.

(h) Any minor admitted to a community treatment facility shall have the same due process rights afforded to a minor who may be admitted to a state hospital, pursuant to the holding in In re Roger S. (1977) 19 Cal.3d 921. Minors who are wards or dependents of the court and to whom this subdivision applies shall be afforded due process in accordance with Section 6552 and related case law, including In re Michael E. (1975) 15 Cal.3d 183. Regulations adopted pursuant to Section 4094 shall specify the procedures for ensuring these rights, including provisions for notification of rights and the time and place of hearings.

(i) Notwithstanding Section 13340 of the Government Code, the sum of forty–five thousand dollars ($45,000) is hereby appropriated annually from the General Fund to the State Department of Mental Health for one personnel year to carry out the provisions of this section.

(Added by Stats.1991, c. 89 (A.B.1288), § 47, eff. June 30, 1991. Amended by Stats.1991, c. 610 (A.B.1727), § 2, eff. Oct. 7, 1991; Stats.1991, c. 611 (A.B.1491), § 22, eff. Oct. 7, 1991; Stats.1993, c. 1245 (S.B.282), § 4, eff. Oct. 11, 1993; Stats.2003, c. 62 (S.B.600), § 323; Stats.2003, c. 575 (A.B.1370), § 1.)

§ 4094.1. Joint protocols for oversight of community treatment facilities

(a)(1) The department and the State Department of Social Services, in consultation with community treatment providers, local mental health departments, and county welfare departments, shall develop joint protocols for the oversight of community treatment facilities.

(2) Subject to subdivision (b), until the protocols and regulatory changes required by paragraph (1) are implemented, entities operating community treatment facilities shall comply with the current reporting requirements and other procedural and administrative mandates established in State Department of Mental Health regulations governing community treatment facilities.

(b) In accordance with all of the following, the State Department of Social Services shall modify existing regulations governing reporting requirements and other procedural and administrative mandates, to take into account the seriousness and frequency of behaviors that are likely to be exhibited by children placed in community treatment facilities. The modifications required by this subdivision shall apply for the entire 2000–01 fiscal year.

(1) Notwithstanding existing regulations, the State Department of Social Services shall issue alternative training and education requirements for community treatment facility managers and staff, which shall be developed in consultation with the State Department of Mental Health, patients' rights advocates, local mental health departments, county welfare offices, and providers.

(2) The department and the State Department of Social Services shall conduct joint bimonthly visits to licensed community treatment facilities to monitor operational progress and to provide technical assistance.

(3) The appropriate department shall centrally review any certification or licensure deficiency before notice of the citation is issued to the community care facility.

(4) A community treatment facility shall be exempt from reporting any occurrence of the use of restraint to the State Department of Social Services, unless physical injury is sustained or unconsciousness or other medical conditions arise from the restraint. All other reporting requirements shall apply.

(Added by Stats.2000, c. 93 (A.B.2877), § 41, eff. July 7, 2000.)

§ 4094.2. Community treatment facility programs; payment rates; budgets; foster care rate; supplemental rate; documents to facilitate study; federal financial participation; emergency regulations

(a) For the purpose of establishing payment rates for community treatment facility programs, the private nonprofit agencies selected to operate these programs shall prepare a budget that covers the total costs of providing residential care and supervision and mental health services for their proposed programs. These costs shall include categories that are allowable under California's Foster Care program and existing programs for mental health services. They shall not include educational, nonmental health medical, and dental costs.

(b) Each agency operating a community treatment facility program shall negotiate a final budget with the local mental health department in the county in which its facility is located (the host county) and other local agencies, as appropriate. This budget agreement shall specify the types and level of care and services to be provided by the community treatment facility program and a payment rate that fully covers the costs included in the negotiated budget. All counties that place children in a community treatment facility program shall make payments using the budget agreement negotiated by the community treatment facility provider and the host county.

(c) A foster care rate shall be established for each community treatment facility program by the State Department of Social Services. These rates shall be established using the existing foster care ratesetting system for group homes, with modifications designed as necessary. It is anticipated that all community treatment facility programs will offer the level of care and services required to receive the highest foster care rate provided for under the current group home ratesetting system.

(d) For the 2001–02 fiscal year, the 2002–03 fiscal year, the 2003–04 fiscal year, and the 2004–05 fiscal year, community treatment facility programs shall also be paid a community treatment facility supplemental rate of up to two thousand five hundred dollars

($2,500) per child per month on behalf of children eligible under the foster care program and children placed out of home pursuant to an individualized education program developed under Section 7572.5 of the Government Code. Subject to the availability of funds, the supplemental rate shall be shared by the state and the counties. Counties shall be responsible for paying a county share of cost equal to 60 percent of the community treatment rate for children placed by counties in community treatment facilities and the state shall be responsible for 40 percent of the community treatment facility supplemental rate. The community treatment facility supplemental rate is intended to supplement, and not to supplant, the payments for which children placed in community treatment facilities are eligible to receive under the foster care program and the existing programs for mental health services.

(e) For initial ratesetting purposes for community treatment facility funding, the cost of mental health services shall be determined by deducting the foster care rate and the community treatment facility supplemental rate from the total allowable cost of the community treatment facility program. Payments to certified providers for mental health services shall be based on eligible services provided to children who are Medi–Cal beneficiaries, up to the statewide maximum allowances for these services.

(f) The department shall provide the community treatment facility supplemental rates to the counties for advanced payment to the community treatment facility providers in the same manner as the regular foster care payment and within the same required payment time limits.

(g) In order to facilitate the study of the costs of community treatment facilities, licensed community treatment facilities shall provide all documents regarding facility operations, treatment, and placements requested by the department.

(h) It is the intent of the Legislature that the department and the State Department of Social Services work to maximize federal financial participation in funding for children placed in community treatment facilities through funds available pursuant to Titles IV–E and XIX of the federal Social Security Act (Title 42 U.S.C. Sec. 670 and following and Sec. 1396 and following) and other appropriate federal programs.

(i) The department and the State Department of Social Services may adopt emergency regulations necessary to implement joint protocols for the oversight of community treatment facilities, to modify existing licensing regulations governing reporting requirements and other procedural and administrative mandates to take into account the seriousness and frequency of behaviors that are likely to be exhibited by the seriously emotionally disturbed children placed in community treatment facility programs, to modify the existing foster care ratesetting regulations, and to pay the community treatment facility supplemental rate. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall become effective immediately upon filing with the Secretary of State. The regulations shall not remain in effect more than 180 days unless the adopting agency complies with all the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

(Added by Stats.2000, c. 93 (A.B.2877), § 42, eff. July 7, 2000. Amended by Stats.2001, c. 171 (A.B.430), § 18, eff. August 10, 2001; Stats.2002, c. 1161 (A.B.442), § 25, eff. Sept. 30, 2002; Stats.2003, c. 230 (A.B.1762), § 44, eff. Aug. 11, 2003; Stats.2004, c. 228 (S.B.1103), § 8, eff. Aug. 16, 2004.)

§ 4094.5. Regulations; admission of children; containment; use of secure facility programs; fire clearance approval; certification of child as seriously emotionally disturbed; costs to counties

Regulations for community treatment facilities adopted pursuant to Section 4094 shall include, but not be limited to, the following:

(a) Only seriously emotionally disturbed children, as defined in Section 5699.2, for whom other less restrictive mental health interventions have been tried, as documented in the case plan, or who are currently placed in an acute psychiatric hospital or state hospital or in a facility outside the state for mental health treatment, and who may require periods of containment to participate in, and benefit from, mental health treatment, shall be placed in a community treatment facility. For purposes of this subdivision, lesser restrictive interventions shall include, but are not limited to, outpatient therapy, family counseling, case management, family preservation efforts, special education classes, or nonpublic schooling.

(b) A facility shall have the capacity to provide secure containment. For purposes of this section, a facility or an area of a facility shall be defined as secure if residents are not permitted to leave the premises of their own volition. All or part of a facility, including its perimeter, but not a room alone, may be locked or secure. If a facility uses perimeter fencing, all beds within the perimeter shall be considered secure beds. All beds outside of a locked or secure wing or facility shall be considered nonsecure beds.

(c) A locked or secure program in a facility shall not be used for disciplinary purposes, but shall be used for the protection of the minor. It may be used as a treatment modality for a child needing that level of care. The use of the secure facility program shall be for as short a period as possible, consistent with the child's case plan and safety. The department shall develop regulations governing the oversight, review, and duration of the use of secure beds.

(d) Fire clearance approval shall be obtained pursuant to Section 1531.2 of the Health and Safety Code.

(e)(1) Prior to admission, any child admitted to a community treatment facility shall have been certified as seriously emotionally disturbed, as defined in Section 5699.2, by a licensed mental health professional. The child shall, prior to admission, have been determined to be in need of the level of care provided by a community treatment facility, by a county interagency placement committee, as prescribed by Section 4096.

(2) Any county cost associated with the certification and the determination provided for in paragraph (1) may be billed as a utilization review expense.

(Added by Stats.1993, c. 1245 (S.B.282), § 5, eff. Oct. 11, 1993.)

§ 4094.6. Children; patients' rights provisions; habeas corpus hearings; regulations

The patients' rights provisions contained in Sections 5325, 5325.1, 5325.2, and 5326 shall be available to any child admitted to, or eligible for admission to, a community treatment facility. Every child placed in a community treatment facility shall have a right to a hearing by writ of habeas corpus, within two judicial days of the filing of a petition for the writ of habeas corpus with the superior court of the county in which the facility is located, for his or her release. Regulations adopted pursuant to Section 4094 shall specify the procedures by which this right shall be ensured. These regulations shall generally be consistent with the procedures contained in Section 5275 et seq., concerning habeas corpus for individuals, including children, subject to various involuntary holds.

(Added by Stats.1993, c. 1245 (S.B.282), § 6, eff. Oct. 11, 1993.)

§ 4094.7. Community treatment facilities; secure and nonsecure beds; number of beds; location of facilities; criteria used to determine programs to be licensed; nonprofit status

(a) A community treatment facility may have both secure and nonsecure beds. However, the State Department of Mental Health shall limit the total number of beds in community treatment facilities to not more than 400 statewide. The State Department of Mental Health shall certify community treatment facilities in such a manner as to ensure an adequate dispersal of these facilities within the state. The State Department of Mental Health shall ensure that there is at least one facility in each of the State Department of Social Services' four regional licensing divisions.

(b) The State Department of Mental Health shall notify the State Department of Social Services when a facility has been certified and has met the program standards pursuant to Section 4094. The State Department of Social Services shall license a community treatment facility for a specified number of secure beds and a specified number of nonsecure beds. The number of secure and nonsecure beds in a facility shall be modified only with the approval of both the State Department of Social Services and the State Department of Mental Health.

(c) The State Department of Mental Health shall develop, with the advice of the State Department of Social Services, county representatives, providers, and interested parties, the criteria to be used to determine which programs among applicant providers shall be licensed. The State Department of Mental Health shall determine which agencies best meet the criteria, certify them in accordance with Section 4094, and refer them to the State Department of Social Services for licensure.

(d) Any community treatment facility proposing to serve seriously emotionally disturbed foster children shall be incorporated as a nonprofit organization.

(e) No later than January 1, 1996, the State Department of Mental Health shall submit its recommendation to the appropriate policy committees of the Legislature relative to the limitation on the number of beds set forth in this section.

(Added by Stats.1993, c. 1245 (S.B.282), § 7, eff. Oct. 11, 1993.)

§ 4095. Legislative intent; duties of department; eligibility requirements; information to be made available to legislature

(a) It is the intent of the Legislature that essential and culturally relevant mental health assessment, case management, and treatment services be available to wards of the court and dependent children of the court placed out of home or who are at risk of requiring out–of–home care. This can be best achieved at the community level through the active collaboration of county social service, probation, education, mental health agencies, and foster care providers.

(b) Therefore, using the Children's Mental Health Services Act (Part 4 (commencing with Section 5850) of Division 5) as a guideline, the State Department of Mental Health, in consultation with the California Conference of Local Mental Health Directors, the State Department of Social Services, the County Welfare Directors Association, the Chief Probation Officer's Association, county alcohol and drug program administrators, and foster care providers, shall do all of the following:

(1) By July 1, 1994, develop an individualized mental health treatment needs assessment protocol for wards of the court and dependent children of the court.

(2) Define supplemental services to be made available to the target population, including, but not limited to, services defined in Section 540 and following of Title 9 of the California Code of Regulations as of January 1, 1994, family therapy, prevocational services, and crisis support activities.

(3) Establish statewide standardized rates for the various types of services defined by the department in accordance with paragraph (2), and provided pursuant to this section. The rates shall be designed to reduce the impact of competition for scarce treatment resources on the cost and availability of care. The rates shall be implemented only when the state provides funding for the services described in this section.

(4) By January 1, 1994, to the extent state funds are available to implement this section, establish, by regulation, all of the following:

(A) Definitions of priority ranking of subsets of the court wards and dependents target population.

(B) A procedure to certify the mental health programs.

(c)(1) Only those individuals within the target population as defined in regulation and determined to be eligible for services as a result of a mental health treatment needs assessment may receive services pursuant to this section.

(2) Allocation of funds appropriated for the purposes of this section shall be based on the number of wards and dependents and may be adjusted in subsequent fiscal years to reflect costs.

(3) The counties shall be held harmless for failure to provide any assessment, case management, and treatment services to those children identified in need of services for whom there is no funding.

(d)(1) The department shall make information available to the Legislature, on request, on the service populations provided mental health treatment services pursuant to this section, the types and costs of services provided, and the number of children identified in need of treatment services who did not receive the services.

(2) The information required by paragraph (1) may include information on need, cost, and service impact experience from the following:

(A) Family preservation pilot programs.

(B) Pilot programs implemented under the former Children's Mental Health Services Act, as contained in Chapter 6.8 (commencing with Section 5565.10) of Part 1 of Division 5.

(C) Programs implemented under Chapter 26 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and Section 11401.

(D) County experience in the implementation of Section 4096.

(Added by Stats.1991, c. 89 (A.B.1288), § 47, eff. June 30, 1991. Amended by Stats.1991, c. 610 (A.B.1727), § 3, eff. Oct. 7, 1991; Stats.1991, c. 611 (A.B.1491), § 23, eff. Oct. 7, 1991; Stats.1992, c. 714 (S.B.307), § 3, eff. Sept. 15, 1992.)

§ 4096. Interagency collaboration; state–county contracts; allocation of funds; procedures for assessment of placed child

(a)(1) Interagency collaboration and children's program services shall be structured in a manner that will facilitate future implementation of the goals of the Children's Mental Health Services Act.

(2) Components shall be added to state–county performance contracts required in Section 5650 that provide for reports from counties on how this section is implemented.

(3) The department shall develop performance contract components required by paragraph (2).

(4) Performance contracts subject to this section shall document that the procedures to be implemented in compliance with this section have been approved by the county social services department and the county probation department.

(b) Funds specified in subdivision (a) of Section 17601 for services to wards of the court and dependent children of the court shall be allocated and distributed to counties based on the number of wards of the court and dependent children of the court in the county.

(c) A county may utilize funds allocated pursuant to subdivision (b) only if the county has an established and operational interagency placement committee, with a membership that includes at least the county placement agency and a licensed mental health professional from the county department of mental health. If necessary, the funds may be used for costs associated with establishing the interagency placement committee.

(d) Subsequent to the establishment of an interagency placement committee, funds allocated pursuant to subdivision (b) shall be used to provide services to wards of the court and dependent children of the court jointly identified by county mental health, social services, and probation departments as the highest priority. Every effort shall be made to match those funds with funds received pursuant to Title XIX of the federal Social Security Act, contained in Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

(e)(1) Each interagency placement committee shall establish procedures whereby a ward of the court or dependent child of the court, or a voluntarily placed child whose placement is funded by the Aid to Families with Dependent Children–Foster Care Program, who is to be placed or is currently placed in a group home program at a rate classification level 13 or rate classification level 14 as specified in Section 11462.01, is assessed as seriously emotionally disturbed, as defined in Section 5600.3 and Section 1502.4 of the Health and Safety Code.

(2) The assessment required by paragraph (1) shall also indicate that the child is in need of the care and services provided by that group home program.

(f) The interagency placement committee shall document the results of the assessment required by subdivision (e) and shall notify the appropriate group home provider and county placing agency, in writing, of those results within 10 days of the completion of the assessment.

(g) If the child's placement is not funded by the Aid to Families with Dependent Children–Foster Care Program, a licensed mental health professional, as defined in Sections 629 to 633, inclusive, of Title 9 of the California Code of Regulations, shall certify that the child is seriously emotionally disturbed, as defined in Section 5600.3 and Section 1502.4 of the Health and Safety Code.

(Added by Stats.1992, c. 714 (S.B.307), § 4, eff. Sept. 15, 1992. Amended by Stats.1994, c. 199 (A.B.1377), § 2, eff. July 18, 1994.)

§ 4096.5. Classification of group home program at rate classification level 13 or 14; certification; termination of certification

(a) The department shall make a determination, within 45 days of receiving a request from a group home to be classified at RCL 13 or RCL 14 pursuant to Section 11462.01, to certify or deny certification that the group home program includes provisions for mental health treatment services that meet the needs of seriously emotionally disturbed children. The department shall issue each certification for a period of one year and shall specify the effective date the program met the certification requirements. A program may be recertified if the program continues to meet the criteria for certification.

(b) The department shall, in consultation with the Conference of Local Mental Health Directors and representatives of provider organizations, develop the criteria for the certification required by subdivision (a) by July 1, 1992.

(c)(1) The department may, upon the request of a county, delegate to that county the certification task.

(2) Any county to which the certification task is delegated pursuant to paragraph (1) shall use the criteria and format developed by the department.

(d) The department or delegated county shall notify the State Department of Social Services Community Care Licensing Division immediately upon the termination of any certification issued in accordance with subdivision (a).

(Added by Stats.1992, c. 714 (S.B.307), § 5, eff. Sept. 15, 1992. Amended by Stats.1994, c. 199 (A.B.1377), § 3, eff. July 18, 1994.)

Chapter 5 EARLY INTERVENTION MENTAL HEALTH PROGRAM

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4097. Establishment of program

There is hereby established, under the administration of the State Department of Mental Health, an Early Intervention Mental Health Program. This program shall provide services to infants and toddlers, from birth to three years of age, and their families. To the extent funding is available through the annual Budget Act, and professional collaborative relationships have been established, the program may be expanded beyond the 1999–2000 pilot project focus on children who have been diagnosed with a developmental disability or delay or who are at risk of a developmental disability or delay.

(Added by Stats.2000, c. 93 (A.B.2877), § 44, eff. July 7, 2000.)

§ 4097.1. Funding

Up to three million dollars ($3,000,000) may be allocated on an annual basis for three years to the department for this program. No more than 5 percent of these funds may be used for state administrative costs.

(Added by Stats.2000, c. 93 (A.B.2877), § 44, eff. July 7, 2000.)

§ 4097.2. Program services

Program services shall be designed to facilitate a relationship–based approach that promotes optimal social and emotional development of the child in interactions between parent, or primary caregiver and child, and shall include both prevention and treatment aspects. A key component of the program shall include training of, and technical assistance to, public and private agencies that currently provide, or plan to provide, early intervention mental health services.

(Added by Stats.2000, c. 93 (A.B.2877), § 44, eff. July 7, 2000.)

§ 4097.3. Evaluation of program

The program shall be formally evaluated by the department and the results of the evaluation reported to the fiscal and policy committees of the Legislature before any additional state funding is authorized beyond June 30, 2003. The department shall provide interim annual progress reports to the Legislature by March 1, 2001, and 2002, which shall include data on the progress of implementation and findings to date.

(Added by Stats.2000, c. 93 (A.B.2877), § 44, eff. July 7, 2000.)

Chapter 6 SUICIDE PREVENTION PROGRAMS

§ 4098. Legislative findings and declarations

The Legislature finds and declares all of the following:

(a) The Surgeon General of the United States has described suicide prevention as a serious public health priority, and has called upon each state to develop a strategy for suicide prevention using a public health approach.

(b) In 1996, 3,401 Californians lost their lives to suicide, an average of nine residents per day. It is estimated that there are between 75,000 and 100,000 suicide attempts in California every year. 11 percent of all suicides in the nation take place in California.

(c) Adolescents are far more likely to attempt suicide than their older California counterparts. Data indicate that there are 100 attempts for every adolescent suicide completed. In 1996, 207 California youth died by suicide. Using this estimate, there were likely more than 20,000 suicide attempts made by California adolescents, and approximately 20 percent of all the estimated suicide attempts occurred in California.

(d) Of all of the violent deaths associated with schools nationwide since 1992, 14 percent were suicides.

(e) Homicide and suicide rank as the third and fifth leading causes of death for youth, respectively. Both are preventable. While the death rates for unintentional injuries decreased by more than 40 percent between 1979 and 1996, the death rates for homicide and suicide increased for youth. Evidence is growing in terms of the links between suicide and other forms of violence. This provides compelling reasons for broadening the state's scope in identifying risk factors for self–harmful behavior. The number of estimated youth suicide attempts; and the growing concerns of youth violence can best be addressed through the implementation of successful gatekeeper training programs to identify and refer youth at risk for self–harmful behavior.

(f) The American Association of Suicidology (AAS) conservatively estimates that the lives of at least six persons related

to or connected to individuals who attempt or complete suicide are impacted. Using these estimates, in 1996, more than 600,000 Californians, or 1,644 individuals per day, struggled to cope with the impact of suicide.

(g) Restriction of access to lethal means significantly reduces the number of successful suicides.

(h) Actual incidents of suicide attempts are expected to be higher than reported because attempts not requiring medical attention are less likely to be reported. The underreporting of suicide completion is also likely since suicide classification involves conclusions regarding the intent of the deceased. The stigma associated with suicide is also likely to contribute to underreporting.

(i) Without interagency collaboration and support for proven, community–based, culturally competent suicide prevention and intervention programs, occurrences of suicide are likely to rise.

(Added by Stats.2000, c. 93 (A.B.2877), § 44.5, eff. July 7, 2000.)

§ 4098.1. Short title

This chapter shall be known and may be cited as the California Suicide Prevention Act of 2000.

(Added by Stats.2000, c. 93 (A.B.2877), § 44.5, eff. July 7, 2000. Amended by Stats.2001, c. 159 (S.B.662), § 190.)

§ 4098.2. Establishment and implementation of program

(a) The State Department of Mental Health, contingent upon appropriation in the annual Budget Act, may establish and implement a suicide prevention, education, and gatekeeper training program to reduce the severity, duration, and incidence of suicidal behaviors.

(b) In developing and implementing the components of this program, the department shall build upon the existing network of nonprofit suicide prevention programs in the state, and shall utilize the expertise of existing suicide prevention programs that meet any of the following criteria:

(1) Have been identified by a county as providing suicide prevention services for that county.

(2) Are certified by the American Association of Suicidology.

(3) Meet criteria for suicide prevention programs that may be established by the department.

(c) The program established by this section shall be consistent with the public health model proposed by the Surgeon General of the United States, and the system of care approach pursuant to the Bronzan–McCorquodale Act, Part 2 (commencing with Section 5600) of Division 5.

(Added by Stats.2000, c. 93 (A.B.2877), § 44.5, eff. July 7, 2000.)

§ 4098.3. Public awareness and education campaigns

The department may contract with an outside agency to establish and implement a targeted public awareness and education campaign on suicide prevention and treatment. Target populations shall include junior high and high school students, as well as other selected populations known to be at high risk of suicide.

(Added by Stats.2000, c. 93 (A.B.2877), § 44.5, eff. July 7, 2000.)

§ 4098.4. Assessment and prevention program

(a) The department may contract with local mental health organizations and professionals with expertise in the assessment and treatment of suicidal behaviors to develop an evidence–based assessment and prevention program for suicide that may be integrated with local mental health departments or replicated by public or private suicide treatment programs, or both.

(b) This component may include the creation of guidebooks and training protocols to improve the intervention capabilities of caregivers who work with individuals at risk of suicide. Applicants may reflect several gatekeeper training models that can be replicated in other communities.

(Added by Stats.2000, c. 93 (A.B.2877), § 44.5, eff. July 7, 2000.)

§ 4098.5. Suicide crisis line integrated network

The department may establish and implement, or contract with an outside agency for the development of a multicounty, 24–hour, centralized suicide crisis line integrated network. Existing crisis lines that meet specifications of the department and the American Association of Suicidology may be included in this integrated network. The crisis line established under this section shall link persons at risk of committing suicide with local suicide prevention and treatment resources.

(Added by Stats.2000, c. 93 (A.B.2877), § 44.5, eff. July 7, 2000.)

Part 2 ADMINISTRATION OF STATE INSTITUTIONS FOR THE MENTALLY DISORDERED

Chapter 1 JURISDICTION AND GENERAL GOVERNMENT

§ 4100. Jurisdiction over institutions

The department has jurisdiction over the following institutions:

(a) Atascadero State Hospital.

(b) Coalinga State Hospital.

(c) Metropolitan State Hospital.

(d) Napa State Hospital.

(e) Patton State Hospital.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3325, § 338, operative July 1, 1973; Stats.1977, c. 1252, p. 4487, § 512, operative July 1, 1978; Stats.1981, c. 409, p. 1598, § 1, eff. Sept. 11, 1981; Stats.1986, c. 224, § 5, eff. June 30, 1986, operative July 1, 1986; Stats.2003, c. 356 (A.B.941), § 2.)

§ 4100.5. Contract for services with department of developmental services

The department may contract with the State Department of Developmental Services to provide services to persons with mental disorders in state hospitals under the jurisdiction of the State Department of Developmental Services.

(Added by Stats.1978, c. 429, p. 1440, § 181, eff. July 17, 1978, operative July 1, 1978.)

§ 4101. Uniform rules and regulations

Except as otherwise specifically provided elsewhere in this code, all of the institutions under the jurisdiction of the State Department of Mental Health shall be governed by uniform rule and regulation of the State Department of Mental Health and all of the provisions of this chapter shall apply to the conduct and management of such institutions.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3325, § 339, operative July 1, 1973; Stats.1977, c. 1252, p. 4487, § 513, operative July 1, 1978.)

§ 4102. Corporation

Each state hospital is a corporation.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969.)

§ 4103. Acquisition of property

Each such corporation may acquire and hold in its corporate name by gift, grant, devise, or bequest property to be applied to the maintenance of the patients of the hospital and for the general use of the corporation.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969.)

§ 4104. Eminent domain

All lands necessary for the use of the state hospitals specified in Section 4100, except those acquired by gift, devise, or purchase, shall be acquired by condemnation as lands for other public uses are acquired.

The terms of every purchase shall be approved by the State Department of Mental Health. No public street or road for railway or

other purposes, except for hospital use, shall be opened through the lands of any state hospital, unless the Legislature by special enactment consents thereto.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3325, § 340, operative July 1, 1973; Stats.1977, c. 1252, p. 4487, § 514, operative July 1, 1978.)

§ 4105. Easements and rights–of–way for road purposes; Patton State Hospital

The Director of General Services shall grant to the County of San Bernardino under such terms, conditions, and restrictions as he or she deems to be for the best interests of the state, the necessary easements and rights–of–way for all purposes of a public road on the Patton State Hospital property. The right–of–way shall be across, along, and upon the following described property:

The east 40 feet of the east one–half of the northwest one–quarter of Section 32, Township 1 North, Range 3 West, San Bernardino Base and Meridian, in the County of San Bernardino, State of California.

(Formerly § 4106, added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Renumbered § 4445.5 and amended by Stats.1978, c. 429, p. 1440, § 182, eff. July 17, 1978, operative July 1, 1978. Renumbered § 4105 and amended by Stats.1986, c. 224, § 9, eff. June 30, 1986.)

§ 4106. Right–of–way for road purposes; Napa State Hospital

Notwithstanding the provisions of Section 4104, the Director of General Services, with the consent of the State Department of Mental Health, may grant to the County of Napa a right–of–way for public road purposes over the northerly portion of the Napa State Hospital lands for the widening of Imola Avenue between Penny Lane and Fourth Avenue, upon such terms and conditions as the Director of General Services may deem for the best interests of the state.

(Formerly § 4107.1, added by Stats.1969, c. 1339, p. 2686, § 1, eff. Sept. 2, 1969. Amended by Stats.1971, c. 1593, p. 3326, § 342, operative July 1, 1973. Renumbered § 4446.5 and amended by Stats.1977, c. 1252, p. 4489, § 517, operative July 1, 1978; Stats.1978, c. 429, p. 1445, § 192, eff. July 17, 1978, operative July 1, 1978. Renumbered § 4106 and amended by Stats.1986, c. 224, § 11, eff. June 30, 1986, operative July 1, 1986.)

§ 4107. Security of certain patients committed to Patton State Hospital; plan to transfer patients from Patton State Hospital; maximum patients committed to Patton State Hospital; Department of Corrections and State Department of Mental Health joint plan to ensure security; duration of section

(a) The security of patients committed pursuant to Section 1026 of, and Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of, the Penal Code, and former Sections 6316 and 6321 of the Welfare and Institutions Code, at Patton State Hospital shall be the responsibility of the Director of the Department of Corrections.

(b) The Department of Corrections and the State Department of Mental Health shall jointly develop a plan to transfer all patients committed to Patton State Hospital pursuant to the provisions in subdivision (a) from Patton State Hospital no later than January 1, 1986, and shall transmit this plan to the Senate Committee on Judiciary and to the Assembly Committee on Criminal Justice, and to the Senate Health and Welfare Committee and Assembly Health Committee by June 30, 1983. The plan shall address whether the transferred patients shall be moved to other state hospitals or to correctional facilities, or both, for commitment and treatment.

(c) Notwithstanding any other provision of law, the State Department of Mental Health shall house no more than 1,336 patients at Patton State Hospital. However, until one year after the activation of the Coalinga Secure Treatment Facility, up to 1,670 patients may be housed at the hospital.

(d) The Department of Corrections and the State Department of Mental Health shall jointly develop a plan for ensuring the external and internal security of the hospital during the construction of additional beds at Patton State Hospital and the establishment of related modular program space for which funding is provided in the Budget Act of 2001. No funds shall be expended for the expansion project until 30 days after the date upon which the plan is submitted to the fiscal committees of the Legislature and the Chair of the Joint Legislative Budget Committee.

(e) The Department of Corrections and the State Department of Mental Health shall also jointly develop a plan for ensuring the external and internal security of the hospital upon the occupation of the additional beds at Patton State Hospital. These beds shall not be occupied by patients until the later of the date that is 30 days after the date upon which the plan is submitted to the Chair of the Joint Legislative Budget Committee or the date upon which it is implemented by the departments.

(f) This section shall remain in effect only until all patients committed, pursuant to the provisions enumerated in subdivision (a), have been removed from Patton State Hospital and shall have no force or effect on or after that date.

(Formerly § 4456.5, added by Stats.1982, c. 9, § 1, eff. Jan. 28, 1982. Amended by Stats.1982, c. 1529, § 4; Stats.1982, c. 1549, § 35; Stats.1984, c. 268, § 36.5, eff. June 30, 1984. Renumbered § 4107 and amended by Stats.1986, c. 224, § 12, eff. June 30, 1986; Stats.1986, c. 933, § 4. Amended by Stats.2001, c. 171 (A.B.430), § 19, eff. August 10, 2001.)

Operative Effect

Section 4107 becomes ineffective by its own terms when all patients committed pursuant to subd. (a) have been removed from Patton State Hospital.

§ 4107.1. Internal security for patients

Consistent with the authority of the State Department of Mental Health to maintain and operate state hospitals under its jurisdiction, the State Department of Mental Health shall provide internal security for the patient population at Patton State Hospital. The State Department of Mental Health may employ hospital police at Patton State Hospital for this purpose.

This section is not intended to increase or decrease the duties and responsibilities of the Department of Corrections at Patton State Hospital.

(Added by Stats.2000, c. 93 (A.B.2877), § 45, eff. July 7, 2000.)

§ 4109. Powers and duties of department

The State Department of Mental Health has general control and direction of the property and concerns of each state hospital specified in Section 4100. The department shall:

(a) Take care of the interests of the hospital, and see that its purpose and its bylaws, rules, and regulations are carried into effect, according to law.

(b) Establish such bylaws, rules, and regulations as it deems necessary and expedient for regulating the duties of officers and employees of the hospital, and for its internal government, discipline, and management.

(c) Maintain an effective inspection of the hospital.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3326, § 344, operative July 1, 1973; Stats.1977, c. 1252, p. 4490, § 519.5, operative July 1, 1978.)

§ 4109.5. Closure of state hospitals; closure plans; submission to legislature; components; legislative approval; developmental centers

(a) Whenever the department proposes the closure of a state hospital, it shall submit as part of the Governor's proposed budget to the Legislature a complete program, to be developed jointly by the State Department of Mental Health and the county in which the state hospital is located, for absorbing as many of the staff of the hospital into the local mental health programs as may be needed by the county. Those programs shall include a redefinition of occupational positions, if necessary, and a recognition by the counties of licensed psychiatric

technicians for treatment of the mentally disordered, developmentally disabled, drug abusers, and alcoholics.

(b) The Director of Mental Health shall submit all plans for the closure of state hospitals as a report with the department's budget. This report shall include all of the following:

(1) The land and buildings affected.

(2) The number of patients affected.

(3) Alternative plans for patients presently in the facilities.

(4) Alternative plans for patients who would have been served by the facility assuming it was not closed.

(5) A joint statement of the impact of the closure by the department and affected local treatment programs.

(c) These plans may be submitted to the Legislature until April 1 of each budget year. Any plans submitted after that date shall not be considered until the fiscal year following that in which it is being considered.

(d) The plan shall not be placed into effect unless the Legislature specifically approves the plan.

(e) This section shall not apply to the proposed closure of a developmental center.

(Added by Stats.1991, c. 89 (A.B.1288), § 48, eff. June 30, 1991. Amended by Stats.1995, c. 513 (S.B.410), § 2.)

§ 4110. Estimates of supplies, expenses, buildings and improvements

The medical superintendent shall make triplicate estimates, in minute detail, as approved by the State Department of Mental Health, of such supplies, expenses, buildings, and improvements as are required for the best interests of the hospital, and for the improvement thereof and of the grounds and buildings connected therewith. These estimates shall be submitted to the State Department of Mental Health, which may revise them. The department shall certify that it has carefully examined the estimates, and that the supplies, expenses, buildings, and improvements contained in such estimates, as approved by it, are required for the best interests of the hospital. The department shall thereupon proceed to purchase such supplies, make such expenditures, or conduct such improvements or buildings in accordance with law.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3326, § 345, operative July 1, 1973; Stats.1977, c. 1252, p. 4490, § 520, operative July 1, 1978.)

§ 4111. Manufacture of supplies and materials

The state hospitals may manufacture supplies and materials necessary or required to be used in any of the state hospitals which can be economically manufactured therein. The necessary cost and expense of providing for and conducting the manufacture of such supplies and materials shall be paid in the same manner as other expenses of the hospitals. No hospital shall enter into or engage in manufacturing any supplies or materials unless permission for the same is obtained from the State Department of Mental Health. If, at any time, it appears to the department that the manufacture of any article is not being or cannot be economically carried on at a state hospital, the department may suspend or stop the manufacture of such article, and on receipt of a certified copy of the order directing the suspension or stopping of such manufacture, by the medical superintendent, the hospital shall cease from manufacturing such article.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3327, § 346, operative July 1, 1973; Stats.1977, c. 1252, p. 4490, § 521, operative July 1, 1978.)

§ 4112. Disposition of money received; appropriation to cover premium for specified third–party Medicare coverage

(a) All money belonging to the state and received by state hospitals from any source, except appropriations, shall, at the end of each month, be deposited in the State Treasury, to the credit of the General Fund. This section shall not apply to the funds known as the industrial or amusement funds.

(b) There is hereby continuously appropriated from the General Fund to the State Department of Mental Health that amount which is necessary to pay the premium, as specified in Section 7353, for third–party health coverage for Medicare beneficiaries who are patients at state hospitals under the jurisdiction of the State Department of Mental Health. It is the intent of the Legislature that the General Fund expenditures authorized by this subdivision not exceed the proceeds to be deposited in the General Fund from Medicare payments to the State Department of Mental Health in any fiscal year. If General Fund expenditures exceed Medicare proceeds in any fiscal year, the State Department of Mental Health shall report to the Joint Legislative Budget Committee and the Department of Finance the following information: (1) the amount of any excess costs compared to the Medicare proceeds; (2) the reasons for the excess costs; and (3) a plan to ensure that in future fiscal years the costs will not exceed proceeds.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1995, c. 305 (A.B.911), § 6, eff. Aug. 3, 1995.)

§ 4112.1. Inapplicability of section 4112 to sheltered workshop funds

Section 4112 does not apply to the funds known as the "sheltered workshop funds."

(Added by Stats.1968, c. 451, p. 1073, § 1; Stats.1969, c. 722, p. 1417, § 1.4, operative July 1, 1969.)

§ 4113. Financial statements

The state hospitals and the officers thereof shall make such financial statements to the Controller as the Controller requires.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969.)

§ 4114. Reports to department

The authorities for the several hospitals shall furnish to the State Department of Mental Health the facts mentioned in Section 4019 of this code and such other obtainable facts as the department from time to time requires of them, with the opinion of the superintendent thereon, if requested. The superintendent or other person in charge of a hospital shall, within 10 days after the admission of any person thereto, cause an abstract of the medical certificate and order on which such person was received and a list of all property, books, and papers of value found in the possession of or belonging to such person to be forwarded to the office of the department, and when a patient is discharged, transferred, or dies, the superintendent or person in charge shall within three days thereafter, send the information to the office of the department, in accordance with the form prescribed by it.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1973, c. 142, p. 415, § 65.6, eff. June 30, 1973, operative July 1, 1973; Stats.1977, c. 1252, p. 4491, § 522, operative July 1, 1978.)

§ 4115. Buildings for religious services

The department may permit, subject to such conditions and regulations as it may impose, any religious or missionary corporation or society to erect a building on the grounds of any state hospital for the holding of religious services. Each such building when erected shall become the property of the state and shall be used exclusively for the benefit of the patients and employees of the state hospital.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969.)

§ 4116. Training schools and courses

The department may establish and supervise under its rules and regulations training schools or courses for employees of the department or of state institutions under its jurisdiction.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969.)

§ 4117. Payment of costs of certain trials and hearings

(a) Whenever a trial is had of any person charged with escape or attempt to escape from a state hospital, whenever a hearing is had on

the return of a writ of habeas corpus prosecuted by or on behalf of any person confined in a state hospital except in a proceeding to which Section 5110 applies, whenever a hearing is had on a petition under Section 1026.2, subdivision (b) of Section 1026.5, Section 2972 of the Penal Code, Section 7361 of this code, or former Section 6316.2 of this code for the release of a person confined in a state hospital, and whenever a person confined in a state hospital is tried for any crime committed therein, the appropriate financial officer or other designated official of the county in which the trial or hearing is had shall make out a statement of all mental health treatment costs and shall make out a separate statement of all nontreatment costs incurred by the county for investigation and other preparation for the trial or hearing, and the actual trial or hearing, all costs of maintaining custody of the patient and transporting him or her to and from the hospital, and costs of appeal, which statements shall be properly certified by a judge of the superior court of that county and the statement of mental health treatment costs shall be sent to the State Department of Mental Health and the statement of all nontreatment costs shall be sent to the Controller for approval. After approval, the department shall cause the amount of mental health treatment costs incurred on or after July 1, 1987, to be paid to the county mental health director or his or her designee where the trial or hearing was held out of the money appropriated for this purpose by the Legislature. In addition, the Controller shall cause the amount of all nontreatment costs incurred on and after July 1, 1987, to be paid out of the money appropriated by the Legislature, to the county treasurer of the county where the trial or hearing was had.

(b) Whenever a hearing is held pursuant to Section 1604, 1608, or 1609 of the Penal Code, all transportation costs to and from a state hospital or a facility designated by the community program director during the hearing shall be paid by the Controller as provided in this subdivision. The appropriate financial officer or other designated official of the county in which a hearing is held shall make out a statement of all transportation costs incurred by the county, which statement shall be properly certified by a judge of the superior court of that county and sent to the Controller for approval. The Controller shall cause the amount of transportation costs incurred on and after July 1, 1987, to be paid to the county treasurer of the county where the hearing was had out of the money appropriated by the Legislature.

As used in this subdivision the community program director is the person designated pursuant to Section 1605 of the Penal Code.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1418, § 1.5, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1971, c. 1593, p. 3327, § 347, operative July 1, 1973; Stats.1977, c. 1252, p. 4491, § 523, operative July 1, 1978; Stats.1986, c. 1020, § 1, operative July 1, 1987; Stats.1991, c. 435 (A.B.655), § 6; Stats.2002, c. 221 (S.B.1019), § 205.)

§ 4118. Cooperation in deportation of aliens

The State Department of Mental Health shall cooperate with the United States Bureau of Immigration in arranging for the deportation of all aliens who are confined in, admitted, or committed to any state hospital.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3327, § 348, operative July 1, 1973; Stats.1977, c. 1252, p. 4492, § 524, operative July 1, 1978.)

§ 4119. Return of confined nonresidents

The State Department of Mental Health shall investigate and examine all nonresident persons residing in any state hospital for the mentally disordered and shall cause these persons, when found to be nonresidents as defined in this chapter, to be promptly and humanely returned under proper supervision to the states in which they have legal residence. The department may defer such action by reason of a patient's medical condition.

Prior to returning the judicially committed nonresident to his or her proper state of residency, the department shall:

(a) Obtain the written consent of the prosecuting attorney of the committing county, the judicially committed nonresident person, and the attorney of record for the judicially committed nonresident person; or,

(b) In the department's discretion request a hearing in the superior court of the committing county requesting a judicial determination of the proposed transfer, notify the court that the state of residence has agreed to the transfer, and file the department's recommendation with a report explaining the reasons for its recommendation.

The court shall give notice of such a hearing to the prosecuting attorney, the judicially committed nonresident person, the attorney of record for the judicially committed nonresident person and the department, no less than 30 days before such hearing. At the hearing, the prosecuting attorney and the judicially committed nonresident person may present evidence bearing on the intended transfer. After considering all evidence presented, the court shall determine whether the intended transfer is in the best interest of and for the proper protection of the nonresident person and the public. The court shall use the same procedures and standard of proof as used in conducting probation revocation hearings pursuant to Section 1203.2 of the Penal Code.

For the purpose of facilitating the prompt and humane return of such persons, the State Department of Mental Health may enter into reciprocal agreements with the proper boards, commissions, or officers of other states or political subdivision thereof for the mutual exchange or return of persons residing in any state hospital for the mentally disordered in one state whose legal residence is in the other, and it may in these reciprocal agreements vary the period of residence as defined in this chapter to meet the requirements or laws of the other states.

The department may give written permission for the return of any resident of this state confined in a public institution in another state, corresponding to any state hospital for the mentally disordered of this state. When a resident is returned to this state pursuant to this chapter, he or she may be admitted as a voluntary patient to any institution of the department as designated by the Director of Mental Health. If he or she is mentally disordered and is a danger to himself or herself or others, or he or she is gravely disabled, he or she may be detained and given care and services in accordance with the provisions of Part 1 (commencing with Section 5000) of Division 5.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2639, § 10, operative July 1, 1969; Stats.1969, c. 722, p. 1418, § 2, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1971, c. 1593, p. 3328, § 349, operative July 1, 1973; Stats.1977, c. 1252, p. 4492, § 525, operative July 1, 1978; Stats.1978, c. 429, p. 1441, § 184, eff. July 17, 1978, operative July 1, 1978; Stats.1983, c. 678, § 1; Stats.1984, c. 1192, § 2.)

§ 4120. Determination of residence

Except as otherwise provided in this section in determining residence for purposes of being entitled to hospitalization in this state and for purposes of returning patients to the states of their residence, an adult person who has lived continuously in this state for a period of one year and who has not acquired residence in another state by living continuously therein for at least one year subsequent to his residence in this state shall be deemed to be a resident of this state. Except as otherwise provided in this section a minor is entitled to hospitalization in this state if the parent or guardian or conservator having custody of the minor has lived continuously in this state for a period of one year and has not acquired residence in another state by living continuously therein for at least one year subsequent to his residence in this state. Such parent, guardian, or conservator shall be deemed a resident of this state for the purposes of this section, and such minor shall be eligible for hospitalization in this state as a mentally disordered person. The eligibility of such minor for hospitalization in this state ceases when such parent, guardian, or conservator ceases to be a resident of this state and such minor shall be transferred to the state of residence of the parent, guardian, or conservator in accordance with the applicable provisions of this code.

Time spent in a public institution for the care of the mentally disordered or developmentally disabled or on leave of absence therefrom shall not be counted in determining the matter of residence in this or another state.

Residence acquired in this or in another state shall not be lost by reason of military service in the armed forces of the United States.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1974, c. 486, p. 1119, § 1.6, eff. July 11, 1974; Stats.1977, c. 1252, p. 4492, § 526, operative July 1, 1978; Stats.1978, c. 429, p. 1441, § 185, eff. July 17, 1978, operative July 1, 1978; Stats.1979, c. 730, p. 2526, § 129, operative Jan. 1, 1981.)

§ 4121. Expense of return

All expenses incurred in returning these persons to other states shall be paid by this state, the person or his or her relatives, but the expense of returning residents of this state shall be borne by the states making the returns.

The cost and expense incurred in effecting the transportation of these nonresident persons to the states in which they have residence shall be advanced from the funds appropriated for that purpose, or, if necessary, from the money appropriated for the care of delinquent or mentally disordered persons.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1977, c. 1252, p. 4493, § 527, operative July 1, 1978; Stats.1979, c. 373, p. 1390, § 352; Stats.1996, c. 320 (A.B.2160), § 44.)

§ 4122. Transfer of patients

The State Department of Mental Health, when it deems it necessary, may, under conditions prescribed by the director, transfer any patients of a state institution under its jurisdiction to another such institution. Transfers of patients of state hospitals shall be made in accordance with the provisions of Section 7300.

Transfer of a conservatee shall only be with the consent of the conservator.

The expense of any such transfer shall be paid from the moneys available by law for the support of the department or for the support of the institution from which the patient is transferred. Liability for the care, support, and maintenance of a patient so transferred in the institution to which he has been transferred shall be the same as if he had originally been committed to such institution. The State Department of Mental Health shall present to the county, not more frequently than monthly, a claim for the amount due the state for care, support, and maintenance of any such patients and which the county shall process and pay pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3328, § 350, operative July 1, 1973; Stats.1977, c. 1252, p. 4493, § 528, operative July 1, 1978.)

§ 4123. Transfer to federal institution

The Director of Mental Health may authorize the transfer of persons from any institution within the department to any institution authorized by the federal government to receive such person.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3329, § 351, operative July 1, 1973; Stats.1977, c. 1252, p. 4493, § 529, operative July 1, 1978.)

§ 4124. List of veterans

The State Department of Mental Health shall send to the Department of Veterans Affairs whenever requested a list of all persons who have been patients for six months or more in each state institution within the jurisdiction of the State Department of Mental Health and who are known to have served in the armed forces of the United States.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3329, § 352, operative July 1, 1973; Stats.1977, c. 1252, p. 4494, § 530, operative July 1, 1978.)

§ 4125. Deposit and investment of patients' funds; benefit fund; report to legislature

(a) The director may deposit any funds of any patient in the possession of each hospital administrator of a state hospital in trust with the treasurer pursuant to Section 16305.3 of the Government Code or, subject to the approval of the Department of Finance, may deposit these funds in an interest–bearing bank account or invest and reinvest these funds in any security described in Article 1 (commencing with Section 16430) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, and for the purposes of deposit or investment only may mingle the funds of any patient with the funds of any other patient. The hospital administrator with the consent of the patient may deposit the interest or increment on the funds of a patient in the state hospital in a special fund for each state hospital, to be designated the "Benefit Fund," of which the hospital administrator shall be the trustee. He or she may, with the approval of the director, after taking into consideration the recommendations of representatives of patient government and recommendations submitted by patient groups, expend the moneys in this fund for the education or entertainment of the patients of the institution.

(b) On and after December 1, 1970:

(1) The funds of a patient in a state hospital or a patient on leave of absence from a state hospital shall not be deposited in interest–bearing bank accounts or invested and reinvested pursuant to this section except when authorized by the patient.

(2) Any interest or increment accruing on the funds of a patient on leave of absence from a state hospital shall be deposited in his or her account.

(3) Any interest or increment accruing on the funds of a patient in a state hospital shall be deposited in his or her account, unless the patient authorizes their deposit in the state hospital's benefit fund.

(c) Any state hospital charges for patient care against the funds of a patient in the possession of a hospital administrator or deposited pursuant to this section and used to pay for that care, shall be stated in an itemized bill to the patient.

(d) No later than August 15 of each year, the director shall provide to the Legislature a summary data sheet containing information on how the benefit fund at each state hospital was expended in the previous fiscal year.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1969, c. 1272, p. 2484, § 2; Stats.1971, c. 1593, p. 3329, § 353, operative July 1, 1973; Stats.1974, c. 1221, p. 2655, § 49; Stats.1977, c. 1252, p. 4494, § 531, operative July 1, 1978; Stats.2002, c. 352 (S.B.1404), § 1.)

§ 4126. Unclaimed personalty of deceased patient

Whenever any patient in any state institution subject to the jurisdiction of the State Department of Mental Health dies, and any personal funds or property of such patient remains in the hands of the superintendent thereof, and no demand is made upon said superintendent by the owner of the funds or property or his legally appointed representative all money and other personal property of such decedent remaining in the custody or possession of the superintendent thereof shall be held by him for a period of one year from the date of death of the decedent, for the benefit of the heirs, legatees, or successors in interest of such decedent.

Upon the expiration of said one–year period, any money remaining unclaimed in the custody or possession of the superintendent shall be delivered by him to the State Treasurer for deposit in the Unclaimed Property Fund under the provision of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

Upon the expiration of said one–year period, all personal property and documents of the decedent, other than cash, remaining unclaimed in the custody or possession of the superintendent, shall be disposed of as follows:

(a) All deeds, contracts or assignments shall be filed by the

superintendent with the public administrator of the county of commitment of the decedent;

(b) All other personal property shall be sold by the superintendent at public auction, or upon a sealed–bid basis, and the proceeds of the sale delivered by him to the State Treasurer in the same manner as is herein provided with respect to unclaimed money of the decedent. If he deems it expedient to do so, the superintendent may accumulate the property of several decedents and sell the property in such lots as he may determine, provided that he makes a determination as to each decedent's share of the proceeds;

(c) If any personal property of the decedent is not salable at public auction, or upon a sealed–bid basis, or if it has no intrinsic value, or if its value is not sufficient to justify the deposit of such property in the State Treasury, the superintendent may order it destroyed;

(d) All other unclaimed personal property of the decedent not disposed of as provided in paragraph (a), (b), or (c) hereof, shall be delivered by the superintendent to the State Controller for deposit in the State Treasury under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3330, § 354, operative July 1, 1973; Stats.1977, c. 1252, p. 4494, § 532, operative July 1, 1978; Stats.1978, c. 429, p. 1442, § 186, eff. July 17, 1978, operative July 1, 1978.)

§ 4127. Unclaimed personalty of escaped or discharged patient

Whenever any patient in any state institution subject to the jurisdiction of the State Department of Mental Health escapes, or is discharged or is on leave of absence from such institution, and any personal funds or property of such patient remains in the hands of the superintendent thereof, and no demand is made upon said superintendent by the owner of the funds or property or his legally appointed representative, all money and other intangible personal property of such patient, other than deeds, contracts, or assignments, remaining in the custody or possession of the superintendent thereof shall be held by him for a period of seven years from the date of such escape, discharge, or leave of absence, for the benefit of such patient or his successors in interest; provided, however, that unclaimed personal funds or property of minors on leave of absence may be exempted from the provisions of this section during the period of their minority and for a period of one year thereafter, at the discretion of the Director of Mental Health.

Upon the expiration of said seven–year period, any money and other intangible property, other than deeds, contracts, or assignments, remaining unclaimed in the custody or possession of the superintendent shall be subject to the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

Upon the expiration of one year from the date of such escape, discharge or parole:

(a) All deeds, contracts or assignments shall be filed by the superintendent with the public administrator of the county of commitment of such patient.

(b) All tangible personal property other than money, remaining unclaimed in his custody or possession, shall be sold by the superintendent at public auction, or upon a sealed–bid basis, and the proceeds of the sale shall be held by him subject to the provisions of Section 4125 of this code, and subject to the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure. If he deems it expedient to do so, the superintendent may accumulate the property of several patients and may seal[1] the property in such lots as he may determine, provided that he makes a determination as to each patient's share of the proceeds.

If any tangible personal property covered by this section is not salable at public auction or upon a sealed–bid basis, or if it has no intrinsic value, or if its value is not sufficient to justify its retention by the superintendent to be offered for sale at public auction or upon a sealed–bid basis at a later date, the superintendent may order it destroyed.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3330, § 355, operative July 1, 1973; Stats.1977, c. 1252, p. 4495, § 533, operative July 1, 1978; Stats.1978, c. 429, p. 1443, § 187, eff. July 17, 1978, operative July 1, 1978.)

[1]So in chaptered copy.

§ 4128. Notice of intended disposition

Before any money or other personal property or documents are delivered to the State Treasurer, State Controller, or public administrator, or sold at auction or upon a sealed–bid basis, or destroyed, under the provisions of Section 4126, and before any personal property or documents are delivered to the public administrator, or sold at auction or upon a sealed–bid basis, or destroyed, under the provisions of Section 4127, of this code, notice of said intended disposition shall be posted at least 30 days prior to the disposition, in a public place at the institution where the disposition is to be made, and a copy of such notice shall be mailed to the last known address of the owner or deceased owner, at least 30 days prior to such disposition. The notice prescribed by this section need not specifically describe each item of property to be disposed of.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969.)

§ 4129. Schedule of property

At the time of delivering any money or other personal property to the State Treasurer or State Controller under the provisions of Section 4126 or of Chapter 7 of Title 10 of Part 3 of the Code of Civil Procedure, the superintendent shall deliver to the State Controller a schedule setting forth a statement and description of all money and other personal property delivered, and the name and last known address of the owner or deceased owner.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969.)

§ 4130. Destroyed property; bar to action

When any personal property has been destroyed as provided in Sections 4126 or 4127, no suit shall thereafter be maintained by any person against the state or any officer thereof for or on account of such property.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969.)

§ 4131. Retroactive application

Notwithstanding any other provision of law, the provisions of Sections 4126 and 4127 shall apply (1) to all money and other personal property delivered to the State Treasurer or State Controller prior to the effective date of said sections, which would have been subject to the provisions thereof if they had been in effect on the date of such delivery; and (2) to all money and other personal property delivered to the State Treasurer or State Controller prior to the effective date of the 1961 amendments to said sections, as said provisions would have applied on the date of such delivery if, on said date of delivery, the provisions of Chapter 1809, Statutes of 1959, had not been in effect.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969.)

§ 4132. Mentally disordered persons to be regarded as patients and not as inmates

It is hereby declared that the provisions of this code reflect the concern of the Legislature that mentally disordered persons are to be regarded as patients to be provided care and treatment and not as inmates of institutions for the purposes of secluding them from the rest of the public.

Whenever any provision of this code heretofore or hereafter enacted uses the term "inmate," it shall be construed to mean "patient."

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969.)

§ 4133. Day hospitals and rehabilitation centers; law governing

All day hospitals and rehabilitation centers maintained by the State Department of Mental Health shall be subject to the provisions of this code pertaining to the admission, transfer, and discharge of patients at the state hospitals, except that all admissions to such facilities shall be subject to the approval of the chief officer thereof. Charges for services rendered to patients at such facilities shall be determined pursuant to Section 4025. The liability for such charges shall be governed by the provisions of Article 4 (commencing with Section 7275) of Chapter 2 of Division 7, except at the hospitals maintained by the State Department of Developmental Services such liability shall be governed by the provisions of Article 4 (commencing with Section 6715) of Chapter 3 of Part 2 of Division 6 and Chapter 3 (commencing with Section 7500) of Division 7.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2639, § 11, operative July 1, 1969; Stats.1971, c. 1593, p. 3331, § 356, operative July 1, 1973; Stats.1977, c. 1252, p. 4496, § 534, operative July 1, 1978; Stats.1979, c. 373, p. 1390, § 353.)

§ 4134. Sanitation, health and hygiene standards; compliance

The state mental hospitals under the jurisdiction of the State Department of Mental Health shall comply with the California Food Sanitation Act, Article 1 (commencing with Section 111950) of Chapter 4 of Part 6 of Division 104 of the Health and Safety Code.

The state mental hospitals under the jurisdiction of the State Department of Mental Health shall also comply with the California Uniform Retail Food Facilities Law, Chapter 4 (commencing with Section 113700) of Part 7 of Division 104 of the Health and Safety Code.

Sanitation, health and hygiene standards that have been adopted by a city, county, or city and county that are more strict than those of the California Uniform Retail Food Facilities Law or the California Food Sanitation Act shall not be applicable to state mental hospitals that are under the jurisdiction of the State Department of Mental Health.

(Added by Stats.1968, c. 1374, p. 2640, § 12, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3332, § 357, operative July 1, 1973; Stats.1977, c. 1252, p. 4496, § 535, operative July 1, 1978; Stats.1996, c. 1023 (S.B.1497), § 461, eff. Sept. 29, 1996.)

§ 4135. Mentally abnormal sex offender; commitment; discharge; records; inspection

Any person committed to the State Department of Mental Health as a mentally abnormal sex offender shall remain a patient committed to the department for the period specified in the court order of commitment or until discharged by the medical director of the state hospital in which the person is a patient, whichever occurs first. The medical director may grant such patient a leave of absence upon such terms and conditions as the medical director deems proper. The petition for commitment of a person as a mentally abnormal sex offender, the reports, the court orders and other court documents filed in the court in connection therewith shall not be open to inspection by any other than the parties to the proceeding, the attorneys for the party or parties, and the State Department of Mental Health, except upon the written authority of a judge of the superior court of the county in which the proceedings were had.

Records of the supervision, care and treatment given to each person committed to the State Department of Mental Health as a mentally abnormal sex offender shall not be open to the inspection of any person not in the employ of the department or of the state hospital, except that a judge of the superior court may by order permit examination of such records.

The charges for the care and treatment rendered to persons committed as mentally abnormal sex offenders shall be in accordance with the provisions of Article 4 (commencing with Section 7275) of Chapter 3 of Division 7.

(Added by Stats.1970, c. 339, p. 734, § 1. Amended by Stats.1971, c. 1593, p. 3332, § 358, operative July 1, 1973; Stats.1977, c. 1252, p. 4497, § 536, operative July 1, 1978.)

§ 4136. Patients in state hospitals for mentally disordered; aid for personal and incidental needs; letter–writing materials and postage

(a) Each patient in a state hospital for the mentally disordered who has resided in the state hospital for a period of at least 30 days shall be paid an amount of aid for his or her personal and incidental needs that, when added to his or her income, equals twelve dollars and fifty cents ($12.50) per month. If a patient elects to do so, a patient may save all or any portion of his or her monthly amount of aid provided for personal and incidental needs for expenditure in subsequent months.

(b) Each indigent patient in a state hospital for the mentally disordered shall be allotted sufficient materials for one letter each week, including postage in an amount not to exceed the cost of one stamp for first–class mail for a one–ounce letter, at no cost to the patient.

(c) Each newly admitted patient, for the first 30 days after his or her initial admission, shall be allotted sufficient materials for two letters each week, including postage for first–class mail for up to two one–ounce letters per week. The hospital administrator shall ensure that additional writing materials and postage are available for purchase by patients at the store or canteen on hospital grounds.

(d) For purposes of this section, "indigent patient" means any patient whose income is no more than twelve dollars and fifty cents ($12.50) per month.

(Added by Stats.1977, c. 985, p. 2268, § 1. Amended by Stats.1978, c. 429, p. 1444, § 188, eff. July 17, 1978, operative July 1, 1978; Stats.2001, c. 171 (A.B.430), § 20, eff. August 10, 2001; Stats.2002, c. 352 (S.B.1404), § 2.)

§ 4137. Death of patient by act of state employee; notice; inquiry; termination of employment; disciplinary action

Whenever a patient dies in a state mental hospital and the coroner finds that the death was by accident or at the hands of another person other than by accident, the State Department of Mental Health shall determine upon review of the coroner's investigation if such death resulted from the negligence, recklessness, or intentional act of a state employee. If it is determined that such death directly resulted from the negligence, recklessness, or intentional act of a state employee, the department shall immediately notify the State Personnel Board and any appropriate licensing agency and shall terminate the employment of such employee as provided by law. In addition, if such state employee is a licensed mental health professional, the appropriate licensing board shall inquire into the circumstances of such death, examine the findings of the coroner's investigation, and make a determination of whether such mental health professional should have his license revoked or suspended or be subject to other disciplinary action. "Licensed mental health professional," as used in this section, means a person licensed by any board, bureau, department, or agency pursuant to a state law and employed in a state mental hospital.

(Added by Stats.1978, c. 69, p. 189, § 3.)

Chapter 2 BOARDS OF TRUSTEES AND OTHER ADVISORY BOARDS

§ 4200. Hospital advisory boards; separate boards for mentally disordered and developmentally disordered; members; appointment; term; vacancy

(a) Each state hospital under the jurisdiction of the State

Department of Mental Health shall have a hospital advisory board of eight members appointed by the Governor from a list of nominations submitted to him or her by the boards of supervisors of counties within each hospital's designated service area. If a state hospital provides services for both the mentally disordered and the developmentally disabled, there shall be a separate advisory board for the program provided the mentally disordered and a separate board for the program provided the developmentally disabled. To the extent feasible, an advisory board serving a hospital for the mentally disordered shall consist of one member who has been a patient in a state mental hospital and two members shall be the parents, spouse, siblings, or adult children of persons who are or have been patients in a state mental hospital, three representatives of different professional disciplines selected from primary user counties for patients under Part 1 (commencing with Section 5000) of Division 5, and two representatives of the general public who have demonstrated an interest in services to the mentally disordered.

(b) Of the members first appointed after the operative date of the amendments made to this section during the 1975–76 legislative session, one shall be appointed for a term of two years, and one for three years. Thereafter, each appointment shall be for the term of three years, except that an appointment to fill a vacancy shall be for the unexpired term only. No person shall be appointed to serve more than a maximum of two terms as a member of the board.

(c) Notwithstanding any provision of this section, members serving on the hospital advisory board on the operative date of the amendments made to this section during the 1987–88 legislative session, may continue to serve on the board until the expiration of their term. The Legislature intends that changes in the composition of the board required by these amendments apply to future vacancies on the board.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1969, c. 459, p. 1017, § 1; Stats.1971, c. 1593, p. 3333, § 359, operative July 1, 1973; Stats.1975, c. 1057, p. 2539, § 1; Stats.1977, c. 1252, p. 4498, § 538, operative July 1, 1978; Stats.1987, c. 1004, § 1; Stats.1991, c. 89 (A.B.1288), § 49, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4201. Eligibility; vacancies

No person shall be eligible for appointment to a hospital advisory board if he is a Member of the Legislature or an elective state officer, and if he becomes such after his appointment his office shall be vacated and a new appointment made. If any appointee fails to attend three consecutive regular meetings of the board, unless he is ill or absent from the state, his office becomes vacant, and the board, by resolution, shall so declare, and shall forthwith transmit a certified copy of such resolution to the Governor.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1969, c. 459, p. 1018, § 2.)

§ 4202. Advisory boards; powers; compensation; meetings; expenses

The advisory boards of the several state hospitals are advisory to the State Department of Mental Health and the Legislature with power of visitation and advice with respect to the conduct of the hospitals and coordination with community mental health programs. The members of the boards shall serve without compensation other than necessary expenses incurred in the performance of duty. They shall organize and elect a chairman. They shall meet at least once every three months and at such other times as they are called by the chairman, by the medical director, by the head of the department or a majority of the board. No expenses shall be allowed except in connection with meetings so held.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1969, c. 459, p. 1018, § 3; Stats.1971, c. 1593, p. 3333, § 360, operative July 1, 1973; Stats.1977, c. 1252, p. 4498, § 539, operative July 1, 1978; Stats.1986, c. 1166, § 3.)

§ 4202.5. Annual meetings; expenses; development of annual regional meetings

(a) The chairman of a hospital advisory board advising a hospital for the mentally disordered shall meet annually with the hospital director, the community mental health directors, and the chairmen of the mental health advisory boards representing counties within the hospital's designated service area.

(b) The chairmen shall be allowed necessary expenses incurred in attending such meetings.

(c) It is the intent of the Legislature that the department assist the development of annual regional meetings required by this section.

(Added by Stats.1975, c. 1057, p. 2540, § 3. Amended by Stats.1976, c. 962, p. 2198, § 1; Stats.1977, c. 1252, p. 4499, § 540, operative July 1, 1978.)

§ 4203. Atascadero State Hospital; advisory board

The Atascadero State Hospital shall have an advisory board of seven persons appointed by the Governor, each of whom holds office for the term of three years. To the extent feasible the composition of board membership shall consist of two persons, who at the time of their appointment are relatives of the patient population, three representatives of professional disciplines serving the patient population, and two representatives of the general public. The board shall advise and consult with the department with respect to the conduct of the hospital. The members of the board shall serve without compensation other than necessary expenses incurred in attendance at meetings.

(Added by Stats.1967, c. 1667, p. 4055, § 35, operative July 1, 1969. Amended by Stats.1969, c. 459, p. 1018, § 5; Stats.1971, c. 1593, p. 3333, § 361, operative July 1, 1973; Stats.1975, c. 1057, p. 2540, § 4.)

Chapter 2.5 FAMILIES OF PERSONS WITH SERIOUS MENTAL DISORDERS

§ 4240. Legislative findings and declarations

The Legislature finds and declares all of the following:

(a) The symptoms and behaviors of persons with serious mental disorders may cause severe disruption of normal family relationships.

(b) Families are often the principal caregivers, housing providers, and case managers for family members with serious mental disorders.

(c) Families of persons with serious mental disorders more often than not have little or no legal authority over their adult mentally disordered and sometimes difficult to manage family members and consequently need advice, skills, emotional support, and guidance to cope with the stressful burden of caregiving in order to be effective and helpful.

(d) Involved families are of inestimable value to the publicly funded and professionally operated state and county mental health system and programs emphasizing self–help can be the best way to assist families in maintaining the cohesion of family life while caring for and assisting a mentally disordered family member.

(e) Since the state's mental health resources are limited and are increasingly being directed on a priority basis toward provision of services to persons with serious mental disorders, informed and active families helping one another can effectively extend and amplify the value of state mental health dollars.

(Added by Stats.1989, c. 1225, § 1.)

§ 4241. Legislative intent

It is the intent of the Legislature, by this chapter, to support an organized program of self–help in which families exchange information, advice, and emotional support to enable them to maintain and strengthen family life and secure or provide more effective treatment, care, and rehabilitation for mentally disordered family members.

It is further the intent of the Legislature to utilize an existing

organized statewide network of families, who have mentally disordered family members, as a means of delivering the services designated in this chapter.
(Added by Stats.1989, c. 1225, § 1.)

§ 4242. Definitions

As used in this chapter:

(a) "Family" means persons whose children, spouses, siblings, parents, grandparents, or grandchildren have a serious mental disorder.

(b) "Serious mental disorder" means a mental disorder which is severe in degree and pesistent[1] in duration and which may cause behavioral disorder or impair functioning so as to interfere substantially with activities of daily living. Serious mental disorders include schizophrenia, major affective disorders, and other severely disabling mental disorders.
(Added by Stats.1989, c. 1225, § 1.)
[1]So in chaptered copy.

§ 4243. Funds; request for proposal seeking applicants capable of supplying services

(a) All funds appropriated for the purposes of this chapter shall be used to contract with an organization to establish a statewide network of families who have mentally disordered family members for the purpose of providing information, advice, support, and other assistance to these families.

(b) A request for proposal shall be issued seeking applicants who are capable of supplying the services specified in Section 4244. The respondent organizations shall demonstrate that they:

(1) Focus their activities exclusively on the seriously mentally disordered.

(2) Have experience in successfully working with state agencies, including, but not limited to, the State Department of Mental Health.

(3) Have the ability to reach and involve the target population as active members.

(4) Have proven experience providing structured self–help services that benefit the target population.

(5) Have experience holding statewide and local conferences to educate families and professionals regarding the needs of the mentally disordered.

(6) Have the financial and organizational structure and experience to manage the funds provided under the proposed contract.
(Added by Stats.1989, c. 1225, § 1.)

§ 4244. Contract to provide specified services

The Director of Mental Health shall enter into a contract with the successful bidder to provide services which shall include, but not be necessarily limited to, all of the following:

(a) Production and statewide dissemination of information to families regarding methods of obtaining and evaluating services needed by mentally disordered family members.

(b) Provision of timely advice, counseling, and other supportive services to assist families in coping with emotional stress and to enable them to care for or otherwise assist mentally disordered family members.

(c) Organizing family self–help services in local communities, accessible to families throughout the state.

(d) Conducting training programs for mental health practitioners and college and university students to inform current and future mental health professionals of the needs of families and methods of utilizing family resources to assist mentally disordered clients.
(Added by Stats.1989, c. 1225, § 1.)

§ 4245. Contracts; annual period; annual report

Contracts entered in pursuant to this chapter shall:

(a) Have an annual contract period from July 1 through June 30 of each fiscal year unless the Director of Mental Health or the contractor terminates the contract earlier.

(b) Require an annual report by the contractor accounting for all expenditures and program accomplishments.
(Added by Stats.1989, c. 1225, § 1.)

Chapter 3 OFFICERS AND EMPLOYEES

§ 4300. Officers

As used in this article, "officers" of a state hospital means:

(a) Clinical director.

(b) Hospital administrator.

(c) Hospital director.
(Added by Stats.1976, c. 962, p. 2199, § 3.)

§ 4301. Clinical director and hospital administrator; appointment; duties; program director

The Director of Mental Health shall appoint and define the duties, subject to the laws governing civil service, of the clinical director and the hospital administrator for each state hospital. The director shall appoint either the clinical director or the hospital administrator to be the hospital director.

The director shall appoint a program director for each program at a state hospital.
(Added by Stats.1976, c. 962, p. 2199, § 3. Amended by Stats.1977, c. 1252, p. 4499, § 542, operative July 1, 1978.)

§ 4302. Determination of employee needs

The Director of the State Department of Mental Health shall have the final authority for determining all other employee needs after consideration of program requests from the various hospitals.
(Added by Stats.1976, c 962, p. 2199, § 3. Amended by Stats.1977, c. 1252, p. 4499, § 543, operative July 1, 1978.)

§ 4303. Salaries and wages; inclusion in estimate; payment

Salaries of resident and other officers and wages of employees shall be included in the budget estimates of, and paid in the same manner as other expenses of, the state hospitals.
(Added by Stats.1976, c. 962, p. 2199, § 3.)

§ 4304. Primary purpose of state hospital; duties of officers and employees

The primary purpose of a state hospital is the medical and nursing care of patients who are mentally disordered. The efforts and direction of the officers and employees of each state hospital shall be directed to this end.
(Added by Stats.1976, c. 962, p. 2199, § 3. Amended by Stats.1977, c. 1252, p. 4499, § 544, operative July 1, 1978.)

§ 4305. Planning, development, etc., of patient services and supervision of research and clinical training

Subject to the rules and regulations established by the department, and under the supervision of the hospital director when the hospital director is the hospital administrator, the clinical director of each state hospital shall be responsible for the planning, development, direction, management, supervision, and evaluation of all patient services, and of the supervision of research and clinical training.
(Added by Stats.1976, c. 962, p. 2199, § 3. Amended by Stats.1977, c. 1252, p. 4499, § 545 operative July 1, 1978.)

§ 4306. Planning, development, etc., of administrative and supportive services

Subject to the rules and regulations established by the department, under the supervision of the hospital director when the hospital director is the clinical director, the hospital administrator shall be responsible for the planning, development, direction, management and supervision of all administrative and supportive services in the hospital facility. Such services include, but are not limited to:

(1) All administrative functions such as personnel, accounting, budgeting, and patients' accounts.

(2) All life–support functions such as food services, facility maintenance and patient supplies.

(3) All other business and security functions.

It shall be the responsibility of the hospital administrator to provide support services, as specified in this section, within available resources, to all hospital treatment programs.
(Added by Stats.1976, c. 962, p. 2199, § 3.)

§ 4307. Chief executive officer; responsibilities

The hospital director is the chief executive officer of the hospital and is responsible for all hospital operations. If the hospital director is the clinical director, then the hospital administrator is responsible to him; if the hospital director is the hospital administrator, then the clinical director is responsible to him.
(Added by Stats.1976, c. 962, p. 2199, § 3.)

§ 4308. Clinical director, hospital administrator, hospital director and program directors; vacancies; appointments; salary; qualifications

As often as a vacancy occurs in a hospital under the jurisdiction of the Director of Mental Health, he shall appoint, as provided in Section 4301, a clinical director, a hospital administrator, a hospital director, and program directors.

A hospital administrator shall be a college graduate preferably with an advanced degree in hospital, business or public administration and shall have had experience in this area. He shall receive a salary which is competitive with other private and public mental hospital administrators.

A clinical director for a state hospital for the mentally disordered shall be a physician who has passed, or shall pass, an examination for a license to practice medicine in California and shall be a qualified specialist in a branch of medicine that includes diseases affecting the brain and nervous system. The clinical director for any state hospital shall be well qualified by training or experience to have proven skills in mental hospital program administration.

The hospital director shall be either the hospital administrator or the clinical director. He shall be selected based on his overall knowledge of the hospital, its programs, and its relationship to its community, and on his demonstrated abilities to administer a large facility.

The standards for the professional qualifications of a program director shall be established by the Director of Mental Health for each patient program. The director shall not adopt any regulations which prohibit a licensed psychiatrist, psychologist, psychiatric technician, or clinical social worker from employment in a patient program in any professional, administrative, or technical position; provided, however, that the program director of a medical–surgical unit shall be a licensed physician.

If the program director is not a physician, a physician shall be available to assume responsibility for all those acts of diagnosis, treatment, or prescribing or ordering of drugs which may only be performed by a licensed physician.
(Added by Stats.1976, c. 962, p. 2199, § 3. Amended by Stats.1977, c. 1252, p. 4500, § 546, operative July 1, 1978; Stats.1979, c. 373, p. 1390, § 354.)

§ 4309. Hospital director; responsibilities; substitutes

The hospital director is responsible for the overall management of the hospital. In his absence one of the other hospital officers or in the absence of both officers a program director shall be designated to perform his duties and assume his responsibilities.
(Added by Stats.1976, c. 962, p. 2199, § 3.)

§ 4311. Hospital administrator; preservation of peace; arrests

The hospital administrator shall be responsible for preserving the peace in the hospital buildings and grounds and may arrest or cause the arrest and appearance before the nearest magistrate for examination, of all persons who attempt to commit or have committed a public offense thereon.
(Added by Stats.1976, c. 962, p. 2199, § 3.)

§ 4312. Rules and regulations

The hospital director may establish rules and regulations not inconsistent with law or departmental regulations, concerning the care and treatment of patients, research, clinical training, and for the government of the hospital buildings and grounds. Any person who knowingly or willfully violates such rules and regulations may, upon the order of either of the hospital officers, be ejected from the buildings and premises of the hospital.
(Added by Stats.1976, c. 962, p. 2199, § 3.)

§ 4313. Police; powers of peace officers; compensation; duties

The hospital administrator of each state hospital may designate, in writing, as a police officer, one or more of the bona fide employees of the hospital. The hospital administrator and each such police officer have the powers and authority conferred by law upon peace officers listed in Section 830.38 of the Penal Code. Such police officers shall receive no compensation as such and the additional duties arising therefrom shall become a part of the duties of their regular positions. When and as directed by the hospital administrator, such police officers shall enforce the rules and regulations of the hospital, preserve peace and order on the premises thereof, and protect and preserve the property of the state.
(Added by Stats.1976, c. 962, p. 2199, § 3. Amended by Stats.1989, c. 1165, § 49.)

§ 4314. Stores and canteens

The Director of Mental Health may set aside and designate any space on the grounds of any of the institutions under the jurisdiction of the department that is not needed for other authorized purposes, to enable such institution to establish and maintain therein a store or canteen for the sale to or for the benefit of patients of the institution of candies, cigarettes, sundries and other articles. The stores shall be conducted subject to the rules and regulations of the department and the rental, utility and service charges shall be fixed as will reimburse the institutions for the cost thereof. The stores when conducted under the direction of a hospital administrator shall be operated on a nonprofit basis but any profits derived shall be deposited in the benefit fund of each such institution as set forth in Section 4125.

Before any store is authorized or established, the Director of Mental Health shall first determine that such facilities are not being furnished adequately by private enterprise in the community where it is proposed to locate the store, and may hold public hearings or cause surveys to be made, to determine the same.

The Director of Mental Health may rent such space to private individuals, for the maintenance of a store or canteen at any of the said institutions upon such terms and subject to such regulations as are approved by the Department of General Services, in accordance with the provisions of Section 13109 of the Government Code. The terms imposed shall provide that the rental, utility and service charges to be paid shall be fixed so as to reimburse the institution for the cost thereof and any additional charges required to be paid shall be deposited in the benefit fund of such institution as set forth in Section 4125.
(Added by Stats.1976, c. 962, p. 2199, § 3. Amended by Stats.1977, c. 1252, p. 4500, § 547, operative July 1, 1978.)

§ 4315. Meaning of "superintendent", "medical superintendent", "superintendent or medical director" or "medical director"

Wherever the term "superintendent", "medical superintendent", or "superintendent or medical director" appears, the term shall be deemed to mean clinical director, except in Sections 4110, 4126, 4127, 4129, 7281, and 7289, where the term shall be deemed to mean hospital administrator.

Wherever the term "medical director" appears, the term shall be deemed to mean clinical director.
(Added by Stats.1976, c. 962, p. 2199, § 3.)

§ 4316. Sheltered workshop; establishment purpose; operation

Subject to rules and regulations adopted by the department, the hospital director may establish a sheltered workshop at a state hospital to provide patients with remunerative work performed in a setting which simulates that of industry and is performed in such a manner as to meet standards of industrial quality. The workshop shall be so operated as to provide the treatment staff with a realistic atmosphere for assessing patients' capabilities in work settings, and to provide opportunities to strengthen and expand patient interests and aptitudes.
(Added by Stats.1976, c. 962, p. 2199, § 3.)

§ 4317. Sheltered workshop fund; administration; use; insurance of goods and products; use of money

At each state hospital at which there is established a sheltered workshop, there shall be a sheltered workshop fund administered by the clinical director. The fund shall be used for the purchase of materials, for the purchase or rental of equipment needed in the manufacturing, fabricating, or assembly of products, for the payment of remuneration to patients engaged in work at the workshop, and for the payment of such other costs of the operation of the workshop as may be directed by the medical director. The clinical director may cause the raw materials, goods in process, finished products, and equipment necessary for the production thereof to be insured against any and all risks of loss, subject to the approval of the Department of General Services. The costs of such insurance shall be paid from the sheltered workshop fund.

All money received from the manufacture, fabrication, assembly, or distribution of products at any state hospital sheltered workshop shall be deposited and credited to the hospital's sheltered workshop fund.
(Added by Stats.1976, c. 962, p. 2203, § 3.)

§ 4318. Written recommended aftercare plan; contents; transmittal

Each state hospital shall, prior to the discharge of any patient who was placed in the facility under a county Short–Doyle plan, prepare a written recommended aftercare plan which shall be transmitted to the local director of mental health services in the county of the patient's placement.

Notwithstanding any other provision of law, such aftercare plan shall specify the following:

(a) Diagnoses;
(b) Treatment initiated;
(c) Medications and their dosage schedules;
(d) Date of discharge;
(e) Location of community placement;
(f) Plan for continuing treatment; and
(g) List of referrals indicated, including, but not limited to:
(1) Public social services.
(2) Legal aid.
(3) Educational services.
(4) Vocational services.
(5) Medical treatment other than mental health services.
(Added by Stats.1976, c. 962, p. 2199, § 3.)

§ 4319. In–service training programs; state hospital treatment personnel

To assure a continuous level of competency for all state hospital treatment personnel under the jurisdiction of the State Department of Mental Health, the department shall provide adequate in–service training programs for such state hospital treatment personnel.
(Formerly § 4315, added by Stats.1977, c. 72, p. 476, § 3, eff. May 24, 1977. Renumbered § 4319 and amended by Stats.1978, c. 429, p. 1444, § 189, eff. July 17, 1978, operative July 1, 1978.)

§ 4320. Psychiatric technicians; equivalency training program; state hospitals for mentally disordered

To assure an adequate supply of licensed psychiatric technicians for state hospitals for the mentally disordered, the State Department of Mental Health, to the extent necessary, shall establish in state hospitals for the mentally disordered a course of study and training equivalent, as determined by the Board of Vocational Nurse and Psychiatric Technician Examiners, to the minimum requirements of an accredited program for psychiatric technicians in the state. No unlicensed psychiatric technician trainee shall be permitted to perform the duties of a licensed psychiatric technician as provided by Section 4502 of the Business and Professions Code unless such trainee performs such duties pursuant to a plan of supervision approved by the Board of Vocational Nurse and Psychiatric Technician Examiners as part of the equivalency trainee program. This section shall not be construed to reduce the effort presently expended by the community college system or private colleges in training psychiatric technicians.
(Formerly § 4316, added by Stats.1977, c. 72, p. 476, § 4, eff. May 24, 1977. Renumbered § 4320 and amended by Stats.1978, c. 429, p. 1444, § 190, eff. July 17, 1978, operative July 1, 1978.)

Chapter 4 COUNTY USE OF STATE HOSPITALS

§ 4330. Reimbursement for use of state hospital beds

The State Department of Mental Health shall be reimbursed for use of state hospital beds by counties pursuant to Part 1 (commencing with Section 5000) of Division 5 as follows:

(a)(1) For the 1991–92 fiscal year, the department shall receive reimbursement in accordance with subdivision (b) of Section 17601. This total may be adjusted to reflect any and all amounts previously unallocated or held in reserve for use by small counties and any adjustments made pursuant to Chapter 1341 of the Statutes of 1990.

(2) It is the intent of the Legislature to encourage and allow greater flexibility with respect to resources during the first transitional year, and, to this end, the Director of Mental Health may implement proposals for purchase in or purchase out of, state hospital beds which were proposed in accordance with Chapter 1341 of the Statutes of 1990.

(3) Funds and bed days historically allocated to small counties shall be allocated to counties with no allocation.

(b) Commencing with the 1992–93 fiscal year and each fiscal year thereafter, the department shall be reimbursed in accordance with the contracts entered into pursuant to Section 4331.

(c) The rate of reimbursement which shall apply each fiscal year shall be determined by the department and shall include all actual costs determined by hospital and by type of service provided. Any costs resulting from overexpenditure in the previous year shall be clearly separated from actual costs projected for the contract year and identified as a part of the rate negotiation. Costs shall not include costs incurred for capital outlay relating to existing facilities or capacity, which shall remain the responsibility of the state. Costs for capital outlay related to future expansions or construction of new facilities requested by any county or cost related to innovative arrangements under Section 4355 shall be a cost to the county unless the expansion, construction or innovative arrangements are determined to be of statewide benefit. Pursuant to Section 11343 of the Government Code, the rate of reimbursement shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) After final determination of state hospital costs for patients covered under Part 1 (commencing with Section 5000) of Division 5, funds that remain unencumbered at the close of the fiscal year shall be made available to counties that used fewer state hospital beds than their contracted number, proportional to the contracted amount not used, but this amount shall not exceed the value of the unused

contracted amount. These funds shall be used for mental health purposes.

(Added by Stats.1991, c. 89 (A.B.1288), § 50, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 24, eff. Oct. 7, 1991; Stats.1992, c. 1374 (A.B.14), § 7, eff. Oct. 28, 1992.)

§ 4331. Contracts for hospital beds

(a) No later than July 1, 1992, and in each subsequent year, each county acting singly or in combination with other counties shall contract with the department for the number and types of state hospital beds that the department will make available to the county or counties during the fiscal year. Each county contract shall be subject to the provisions of this chapter, as well as other applicable provisions of law, but shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the State Administrative Manual, or the Public Contract Code and shall not be subject to review and approval by the Department of General Services.

(b)(1) No later than January 1, 1992, each county acting singly or in combination with other counties, shall notify the department in writing as to the number and type of state hospital beds the county or counties will contract for with the state in the 1992–93 fiscal year.

(2) No later than July 1, 1992, and no later than July 1 of each subsequent year, each county acting singly or in combination with other counties shall give the department preliminary written notification of the number and types of state hospital beds that the county or counties will contract for with the state during the subsequent fiscal year. Counties may include in their notification a request for additional beds beyond their previous year's contract.

(3) No later than January 1, 1993, and no later than January 1 of each subsequent year, each county acting singly or in combination with other counties shall give the department final written notifications of the number and types of state hospital beds that the county or counties will contract for with the state during the subsequent fiscal year. These notifications shall not preclude subsequent changes agreed to by both the state and the county in the contract negotiation process.

(4) The department shall provide counties with preliminary cost and utilization information based on the best data possible, 60 days in advance of the preliminary notification deadline, and a proposed final cost estimate, based on the best data possible, 60 days in advance of the final deadline. Final rates shall be subject to contract agreement.

(c) There shall be no increase in the number of beds provided to a county or group of counties during a fiscal year unless the contract between the department and that county or group of counties is amended by mutual agreement. Any significant change in services requested by a county shall require amendment of the contract.

(d) If a county or group of counties has not contracted with the department by July 1 of any given year, the number of beds to be provided that fiscal year shall be the same as the number provided the previous fiscal year, unless the department and a county have formally agreed otherwise, and the rate of reimbursement that shall be paid to the department shall be at the amount set by the department for the fiscal year commencing July 1 of that year. The department shall provide a mechanism for formal agreement of bed levels no later than June 15 of each year. However, after July 1 the department and a county or group of counties may enter into a contract pursuant to this chapter and the contract shall govern the number of state hospital beds and rates of reimbursement for the fiscal year commencing July 1 of that year.

(Added by Stats.1991, c. 89, (A.B.1288), § 50, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 25, eff. Oct. 7, 1991; Stats.1992, c. 1374 (A.B.14), § 8, eff. Oct. 28, 1992.)

§ 4332. Contract provisions

(a) Contracts entered into pursuant to Section 4331 shall do all of the following:

(1) Specify the number of beds to be provided.

(2) Specify the rate or rates of reimbursement.

(3) Set forth the specific type of services requested by the county, in detail.

(4) Specify procedures for admission and discharge.

(5) Include any other pertinent terms as agreed to by the department and the county.

(b) The department shall consult, in advance, with the counties regarding any changes in state hospital facilities or operations which would significantly impact access to care or quality of care, or significantly increase costs.

(c) Beginning with the 1992–93 fiscal year and annually thereafter, the department shall make available to counties upon request the basis upon which its rates have been set, including any indirect cost allocation formulas.

(Added by Stats.1991, c. 89 (A.B.1288), § 50, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 26, eff. Oct. 7, 1991.)

§ 4333. Hospital net bed reductions; exempted counties; annual contracts for state hospital beds

(a) In the event a county or counties elect to reduce their state hospital resources, beginning July 1, 1992, systemwide state hospital net bed reduction in any one year may not exceed 10 percent of the total for patients under Part 1 (commencing with Section 5000) of Division 5 in the prior year without the specific approval of the Director of Mental Health.

(b) Net bed reductions at any one hospital may not exceed 10 percent of its contracted beds without specific approval of the Director of Mental Health.

(c) If the proposed reduction in any year exceeds the maximum permitted amount, the department, with the assistance of counties, shall make every effort to contract for beds with other purchasers.

(d) If total county requests for bed reduction in any one year or at any one facility still exceed the amount of reduction allowed, each county's share of the reduction shall be determined by taking the ratio of its contracted beds to the total contracted and multiplying this by the total beds permitted to be reduced.

(e)(1) Small counties shall be exempted from the limitations of this section and shall have the amount of their reduction determined by the Director of Mental Health.

(2) For purposes of this chapter, "small counties" means counties with a population of 125,000 or less based on the most recent available estimates of population data determined by the Population Research Unit of the Department of Finance.

(f) It is the intent of the Legislature that counties have maximum flexibility in planning the use of these resources, which includes making full use of existing facilities and that the Director of Mental Health enforce his or her exemption authority in a manner consistent with this intent. Because freed–up beds may be purchased by other counties or may be used for other purposes, it is anticipated that individual county flexibility will be substantially greater than the 10–percent figure described in subdivisions (a) and (b).

(g) Counties may annually contract for state hospital beds as single entities or in combination with other counties. For purposes of this section, small counties, as defined in subdivision (e):

(1) Are encouraged to establish regional authorities to pool their resources to assure their ability to provide the necessary array of services to their mentally ill populations not otherwise available to them on an individual basis.

(2) May receive loans from the General Fund when emergency state hospital beds are needed, not to exceed one year in duration, with interest payable at the same rate as that earned through the Pooled Money Investment Fund. Any interest due may be waived based upon a finding of emergency by the Secretary of Health and Welfare and the Director of Finance.

(Added by Stats.1991, c. 89 (A.B.1288), § 50, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 27, eff. Oct. 7, 1991; Stats.1992, c. 713 (A.B.3564), § 32, eff. Sept. 15, 1992.)

§ 4333.5. Use of facilities; costs

(a) The department shall encourage the counties to use state hospital facilities, in addition to utilizing state hospital beds pursuant to contract, for additional treatment programs through contracts, on either an individual county or regional basis.

(b) For purposes of contracts entered into through encouragement provided by the department pursuant to subdivision (a), costs shall be based on the actual costs to the state, and shall be prorated on an annual lease basis.

(Added by Stats.1992, c. 1374 (A.B.14), § 9, eff. Oct. 28, 1992.)

§ 4334. Catalogue of state hospital services; county involvement in planning

By July 1, 1992, the State Department of Mental Health, in collaboration with counties, shall do all of the following:

(a) Prepare and publish a catalogue of available state hospital services. The catalogue shall be updated annually.

(b) Develop a process by which a county or group of counties constituting the primary user of a particular hospital may, upon their request individually, or through selected representatives, participate in long–range planning and program development to ensure the provision of appropriate services.

(c) Ensure direct county involvement in admission to, and discharge from, beds contracted for patients under Part 1 (commencing with Section 5000) of Division 5.

(Added by Stats.1991, c. 89 (A.B.1288), § 50, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4335. Other arrangements for delivery of services

Nothing in this chapter is intended to prevent the department from entering into innovative arrangements with counties for delivery of state hospital services. The Director of Mental Health may contract with a county, or group of counties, for excess state hospital space for purposes of staffing and operating their own program.

(Added by Stats.1991, c. 89 (A.B.1288), § 50, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

Part 3 DEPARTMENTAL PROGRAM INITIATIVES

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

Chapter 1 SELF–HELP PROGRAMS

§ 4340. Mental health prevention program; establishment of self–help groups

The department shall maintain a statewide mental health prevention program directed toward a reduction in the need for utilization of the treatment system and the development and strengthening of community support and self–help networks. The department shall support the establishment of self–help groups, which may be facilitated by an outside entity, subject to the approval of the hospital administrator, at state hospitals.

(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.2002, c. 352 (S.B.1404), § 3.)

Chapter 2 HUMAN RESOURCE DEVELOPMENT

§ 4341. Human resources development program; implementation; areas of emphasis

(a) In order to ensure the availability of an adequate number of persons from all disciplines necessary to implement appropriate and effective services to severely mentally ill persons of all ages and ethnic groups, the department shall, to the extent resources are available, implement a Human Resources Development Program.

(b) Implementation of the program shall include negotiation with any or all of the following: the University of California, state colleges, community colleges, private universities and colleges, public and private hospitals, and public and private rehabilitation, community care, treatment providers, and professional associations, to arrange affiliations and contracts for educational and training programs to ensure appropriate numbers of graduates with experience in serving severely mentally ill persons in the most cost–effective programs.

(c) The human resources development effort shall be undertaken with active participation of the California Conference of Local Mental Health Directors, client and family representatives, and professional and academic institutions.

(d) The program shall give particular attention to areas of specific expertise where local programs and state hospitals have difficulty recruiting qualified staff, including programs for forensic persistently severely mentally ill children and youth, and severely mentally ill elderly persons. Specific attention shall be given to ensuring the development of a mental health work force with the necessary bilingual and bicultural skills to deliver effective service to the diverse population of the state.

(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 28, eff. Oct. 7, 1991.)

§ 4341.1. Task force for staffing needs of health, human services, and criminal justice agencies; members; objectives of task force; progress report

(a) The task force funded by Schedule (a) of Item 4440–001–0001 of Section 2.00 of the Budget Act of 2000 (Ch. 52, Stats. 2000) to address and identify options for meeting the staffing needs of state and county health, human services, and criminal justice agencies shall include a representative from the State Department of Mental Health, who shall serve as chair, the Secretary of the Health and Human Services Agency or his or her designee, a representative of the Youth and Adult Correctional Agency, the Secretary for Education or his or her designee, a representative of the California Mental Health Planning Council, and representatives of the University of California, including the University of California medical schools and medical residency training programs, the California State University, the California Community Colleges, the California School Boards Association, the Association of California School Administrators, the Medical Board of California, the Board of Behavioral Sciences, the Board of Psychology, the California Mental Health Directors Association, the California Council of Community Mental Health Agencies, the National Alliance for the Mentally Ill–California, the California Network of Mental Health Clients, the United Advocates for Children of California, and the California Alliance of Child and Family Services. The State Department of Mental Health shall provide staff to the task force.

(b) The task force shall do all of the following:

(1) Study the shortage of mental health workers in publicly funded mental health services and develop recommendations for expansion of all of the following:

(A) Programs such as the Human Services Academy currently established by the Mental Health Association of Los Angeles and the Los Angeles Unified School District to offer high school students education about mental health problems, services, and information about the meaning and value to society of service in publicly funded mental health care.

(B) Programs that expand graduate school programs.

(C) Ways to expand the utilization of those who have been consumers of mental health services.

(D) Ways to engage community college students, four–year college undergraduates, and college graduates in careers leading to mental health service.

(E) Efforts to change the curriculum of programs, undergraduate, graduate, and postgraduate, including medical residency programs, that could lead to employment in public mental health programs to make sure there is clinical training and education that complements and supports employment in public mental health programs.

(F) Revisions, as may be necessary, to licensing requirements including recommendations for proposed legislation, and scope of practice issues that maximize the opportunity to utilize consumers and are consistent with the types of services likely to be required to serve seriously emotionally disturbed children and severely mentally ill adults who need a wide array of services as set forth in the children's and adults' systems of care.

(G) Financial supports in the form of stipends, loan forgiveness, or other programs that could be accomplished through state or federal funds that would further support the need for employment.

(2) Annually quantify the need for different types of providers in different regions of the state including the cost, positions, and projected future needs.

(3) Evaluate the impact of competition from the private sector on the availability of mental health professionals in the public sector.

(4) Address other issues of collaboration and coordination between the educational system, the licensing boards, and the mental health system that are impeding progress in expanding the mental health workforce.

(5) Address issues of collaboration and coordination within the various levels of the educational system that are impeding progress in expanding the mental health workforce.

(6) Develop recommendations to ensure all of the following:

(A) Two–year and four–year colleges have sufficient capacity to train all the mental health staff needed.

(B) Issues that obstruct development of a career ladder between two–year and four–year schools are eliminated.

(C) Community college programs have clear delineation of both skills and theory that need to be mastered for each type of position.

(D) There are new certificate programs for psychosocial rehabilitation at the community college level and post baccalaureate case management.

(7) Examine options for collaboration on curriculum between employees in the public mental health system, and high schools, community colleges, and undergraduate and graduate education programs.

(c) The task force shall issue a progress report to the Legislature on its findings on or before May 1, 2001, and shall issue a final report to the Legislature on or before May 1, 2002.

(Added by Stats.2000, c. 814 (S.B.1748), § 2.)

§ 4341.5. Forensic skills; training programs

In order to ensure an adequate number of qualified psychiatrists and psychologists with forensic skills, the State Department of Mental Health shall, to the extent resources are available, plan with the University of California, private universities, and the California Postsecondary Education Commission, for the development of programs for the training of psychiatrists and psychologists with forensic skills, and recommend appropriate incentive measures, such as state scholarships.

(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

Chapter 4 PRIMARY INTERVENTION PROGRAM

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4343. Legislative intent; goals

The Legislature recognizes that prevention and early intervention services have long been slighted in the community mental health programs and has identified, as a goal of the Bronzan–McCorquodale program, the prevention of serious mental disorders and psychological problems. It is the intent of the Legislature to establish throughout the state a school–based primary intervention program designed for the early detection and prevention of emotional, behavioral, and learning problems in primary grade children with services provided by child aides or unpaid volunteers under the supervision of mental health professionals. The Legislature recognizes the documented significant improvement of children who have participated in the program over time. The goal of the primary intervention program is to help young children derive maximum profit from the school experience and, in so doing, prevent later–life problems of school failure, unemployment, delinquency, criminal behavior, and substance abuse.

(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1991, c. 858 (A.B.1635), § 2, eff. Oct. 14, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4344. Development of programs

Primary intervention programs shall be developed in accordance with the guidelines and principles set forth in this chapter. To this end, school districts, publicly funded preschool programs, and local mental health programs may implement primary intervention programs with available funds, or may jointly apply to the State Department of Mental Health to be considered for grant programs outlined in this chapter.

(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1991, c. 858 (A.B.1635), § 3, eff. Oct. 14, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4345. Program guidelines

The Director of Mental Health shall develop guidelines for primary intervention programs in accordance with the following:

(a) School–based programs shall serve children in grades kindergarten through three.

(b) The programs may serve children beyond grade three who could benefit from the program but the number of children accepted into the program from grades four and above shall not represent more than 15 percent of the total number of children served.

(c) The programs may serve children enrolled in a publicly funded preschool program.

(d) The programs shall serve children referred by either a screening process, a teacher, school–based mental health professionals, other school personnel who have had opportunities to observe children in interpersonal contacts, or parents. If a screening process is utilized, behavior rating scales shall constitute the primary instrument from which referrals to primary intervention programs are made. To a more limited extent, observations of children working on structured tasks and standardized projective tests may also be used.

(e) The programs may include a parent involvement component.

(f) Before acceptance of a child into a primary intervention program, parental consent is required.

(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1991, c. 858 (A.B.1635), § 4, eff. Oct. 14, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4346. Program teams; responsibilities; training

(a) Each primary intervention program shall have a core team consisting of school–based mental health professionals, including credentialed school psychologists, school counselors, school social workers, or local mental health program professionals, or a combination thereof, and child aides.

(b) The school–based mental health professionals shall be responsible for accepting referred children into the program, supervision of the child aides, assignment of a child to an aide, evaluation of progress, and determination of termination from the program. The mental health professionals shall supervise the scoring and interpretation of screening and assessment test data, conduct conferences with parents, and evaluate the effectiveness of individual aides.

(c) Child aides, under supervision of the school–based mental health professional, shall conduct weekly play sessions with children served in the primary intervention programs. Child aides may be salaried school aides, unpaid volunteers or other persons with time and interest in working with young children, and who may be provided stipends to meet expenses.

(d) All aides shall undergo a time–limited period of training that is focused on the main intervention strategies of the particular program and is provided prior to direct contacts with the children served in the primary intervention programs. Training shall, at a minimum, include basic child development, crisis intervention, techniques of nondirective play, other intervention skills appropriate to identified problem areas, and instruction in utilizing supervision and consultation.

(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1991, c. 858 (A.B.1635), § 5, eff. Oct. 14, 1991; Stats.1992, c. 722 (S.B.485), § 18, eff. Sept. 15, 1992.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4347. Referrals

School districts or publicly funded preschools receiving funds under this chapter shall demonstrate a capability for referral to appropriate public and private community services. The referrals shall be made through contacts with families in response to information regarding the need for referral arising from the child aide sessions.

(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1991, c. 858 (A.B.1635), § 6, eff. Oct. 14, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4348. Grants; program financing

(a)(1) Subject to the availability of funding each year, the State Department of Mental Health shall award primary intervention program grants pursuant to a request for proposal consistent with the provisions of this chapter.

(2) In counties over 100,000 in population, each application shall be the product of a proposal developed jointly between the local mental health program and a school district or publicly funded preschool. The grant award shall be administered by the local mental health program.

(3) In counties 100,000 in population and under, an application may be submitted pursuant to paragraph (2) or by the county superintendent of schools on behalf of one or more school districts, or by a school district. If an application is submitted by the county superintendent of schools or by a school district, the county office of education or the school district shall administer the grant and the application shall include evidence satisfactory to the department that adequate mental health training and consultation will be provided at each program site.

(b) Prior to dissemination of a request for proposal, the department shall establish a maximum figure for the amount of program funds available per project site and for the number of sites that may be funded per school district or regional area. The department shall be guided in its decisions by the availability of uncommitted funds designated for the primary intervention program.

(c) Primary intervention program grants shall be funded from funds appropriated for programs pursuant to Part 4 (commencing with Section 4370) and shall receive first priority for these funds.

(d) Upon approving a primary intervention grant, the State Department of Mental Health shall contract with the grant recipient to provide a primary intervention program for a period of up to three years.

(e) Costs of a primary intervention program shall be financed on a basis of:

(1) A maximum of 50 percent from primary intervention program grant funds or a maximum established by the department, whichever is less.

(2) At least 50 percent from a combination of school district or preschool and local mental health program funds.

(f) The school district or preschool share may be in–kind contributions, including staff, space, equipment, materials, and reasonable administrative services.

(1) Contributed space to be used for child aide sessions must be comfortable, attractive, and engaging to young children. Small individual rooms are preferable.

(2) Space to be used for group meetings and consultation sessions may also be contributed.

(3) Equipment and materials may be contributed if they include items that encourage child participation in nondirective play.

(g) The local mental health program share may include either the cost of the mental health professionals as described in subdivision (b) of Section 4346 or the contribution of professional staff to provide case consultation to the child aides and assistance in child aide training.

(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1991, c. 858 (A.B.1635), § 7, eff. Oct. 14, 1991; Stats.1992, c. 722 (S.B.485), § 19, eff. Sept. 15, 1992.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4349. Selection criteria

The State Department of Mental Health shall, on the basis of applications submitted pursuant to a request for proposal, select recipients of primary intervention program grants based on the following criteria:

(a) Availability of professional and other program staff with related experience and interest in early intervention.

(b) Reasonable evidence of future stability of the program and its personnel.

(c) Representation of a wide range of economic, ethnic, and cultural populations.

(d) Demonstration of strong support by the teaching, pupil services, and administrative personnel at the school or preschool and by the local mental health program.

(e) Assurance that grants would supplement existing local resources.

(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1991, c. 858 (A.B.1635), § 8, eff. Oct. 14, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4349.5. Application of chapter to grants awarded prior to effective date of this section

Grants that have been awarded prior to the effective date of this section shall continue to be subject to the provisions of this chapter, including the grant recipient, matching, and eligibility requirements.
(Added by Stats.1992, c. 722 (S.B.485), § 20, eff. Sept. 15, 1992.)

§ 4349.7. Proposals submitted between April 1, 1992, and May 1, 1992, receiving passing score; funding

Proposals submitted to the department between April 1, 1992, and May 1, 1992, pursuant to Sections 4343 to 4350, inclusive, that received a passing score shall be funded pursuant to Part 4 (commencing with Section 4370). Those grants shall continue to be subject to this chapter, including the matching and eligibility requirements.
(Added by Stats.1992, c. 722 (S.B.485), § 21, eff. Sept. 15, 1992.)

§ 4350. Program roles

(a) The role of the school district or preschool in each approved primary intervention program shall be to do all of the following:

(1) Arrange for mental health professionals based at the program site to supervise program staff and procedures. These persons may be either pupil personnel staff or local mental health program staff.

(2) Recruit and train child aides.

(3) Screen and assess children in accordance with guidelines established by the department.

(4) Provide individual and group play sessions to selected children in accordance with guidelines established by the department.

(5) Provide space and equipment for child aide sessions with children and for staff meetings.

(6) Establish and maintain program records.

(7) Prepare program reports in accordance with guidelines established by the department.

(8) Submit periodic statements of program grant fund expenditures to the local mental health program for reimbursement in accordance with the approved program budget.

(b) The role of the local mental health program in each approved jointly proposed primary intervention program shall be to:

(1) Administer state program grant funds awarded by the department by contracting with the school district or preschool to provide a primary intervention program in accordance with this chapter and the joint proposal of the local mental health program and the school district or preschool as approved by the department.

(2) Contribute professional staff to the program to do both of the following:

(A) Assist the school district or preschool in the recruiting and initial training of child aides.

(B) Provide ongoing case consultation and training to the child aides at regular intervals at the program site.

(3) Ensure access to appropriate mental health treatment services available within the county's program for those children in the program and their families who require services that are beyond the scope and purposes of the primary intervention program.

(c) The role of the State Department of Mental Health in each approved primary intervention program shall be to:

(1)(A) Develop a contract with the local mental health program for provision of a primary intervention program in accordance with this chapter and the joint proposal of the local mental health program and school district or preschool as approved by the department.

(B) Develop contracts with the county superintendent of schools or a school district for provision of a primary intervention program in accordance with this chapter and the proposal submitted by the county superintendent of schools or a school district pursuant to paragraph (3) of subdivision (a) of Section 4348.

(2) Develop contracts with school districts or local mental health programs to permit the establishment of technical assistance centers to support in the timely and effective implementation of the primary intervention programs. Technical assistance centers shall be in districts which have successfully implemented programs over a period of time.

(3) Disburse program grant funds to the local mental health program or county superintendent of schools or school district in accordance with terms of the contract.

(4) Conduct visits to each program site at least once during the first year of funding, and thereafter as necessary, in order to determine compliance with this chapter and the contract and to determine training needs of program staff.

(5) Provide for periodic training workshops for program staff.

(6) Establish guidelines for program procedures, screening and assessment of children, records, and reports.
(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1991, c. 858 (A.B.1635), § 9, eff. Oct. 14, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4350.5. School districts or county superintendents of schools; responsibilities

(a) School districts or county superintendents of schools proposing to serve as grant recipients pursuant to paragraph (3) of subdivision (a) of Section 4348 shall perform the functions described in subdivision (a) of Section 4350.

(b) The county office of education or school district subject to subdivision (a) shall ensure the provision of adequate initial and ongoing case consultation and training for child aides at regular intervals at each program site from qualified mental health professionals.
(Added by Stats.1991, c. 858 (A.B.1635), § 10, eff. Oct. 14, 1991.)

§ 4351. Training of personnel

The department shall provide for training of program personnel. Funds for this purpose may be appropriated under Section 11489 of the Health and Safety Code, through other special funds, or through the state budget. Training of program personnel may be contracted out to programs designated by the State Department of Mental Health appropriate to provide these services.
(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1991, c. 858 (A.B.1635), § 11, eff. Oct. 14, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4352. Review of programs

(a) The State Department of Mental Health shall conduct a review of each primary intervention program at least once during the first year of funding, and thereafter as necessary.

(b) The purposes of the reviews are program improvement and compliance with the guidelines set forth in this chapter. The review procedure shall be adequately flexible for application to primary intervention programs of varying sizes and models.

(c) The State Department of Mental Health may contract for the conducting of reviews with programs appropriate for providing these services. Funds may be appropriated for this purpose pursuant to Section 11489 of the Health and Safety Code, from other special funds, or through the annual Budget Act.
(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1991, c. 858 (A.B.1635), § 12, eff. Oct. 14, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4352.5. Administrative costs

Up to 10 percent of the total state funds available annually for the primary intervention program from all sources may be utilized by the department for administration, training, consultation, and evaluation.
(Added by Stats.1991, c. 858 (A.B.1635), § 13, eff. Oct. 14, 1991.)

Chapter 5 PERSONS WITH ACQUIRED TRAUMATIC BRAIN INJURY

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

REPEAL

For repeal of Chapter 5, see Welfare and Institutions Code § 4359.

§ 4353. Legislative findings and declarations

The Legislature finds and declares all of the following:

(a) There is a large population of persons who have suffered traumatic head injuries resulting in significant functional impairment.

(b) Approximately 80 percent of these injuries have occurred as a direct result of motor vehicle accidents.

(c) There is a lack of awareness of the problems associated with head injury resulting in a significant lack of services for persons with head injuries, including, but not limited to, in–home and out–of–home services, respite care, placement programs, counseling, cognitive rehabilitation, transitional living, and vocational rehabilitation services.

(d) Although there are currently a number of different programs attempting to meet the needs of the persons with head injuries, there is no clearly defined ultimate responsibility vested in any single state agency. Nothing in this section shall be construed to mandate services for persons with acquired traumatic injury through county and city programs.

(e) There is no programmatic coordination among agencies to facilitate the provision of a continuing range of services appropriate for persons with traumatic head injuries.

(f) There is a serious gap in postacute care services resulting in incomplete recovery of functional potential.

(g) Due to the problems referred to in this section, the state is not adequately meeting the needs of persons with head injuries enabling them to return to work and to lead productive lives.
(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 30, eff. Oct. 7, 1991.)

REPEAL

For repeal of Chapter 5, see Welfare and Institutions Code § 4359.

§ 4354. Definitions

For purposes of this chapter, the following definitions shall apply:

(a) "Acquired traumatic brain injury" is an injury that is sustained after birth from an external force to the brain or any of its parts, resulting in cognitive, psychological, neurological, or anatomical changes in brain functions.

(b) "Department" means the State Department of Mental Health.

(c) "Director" means the Director of Mental Health.

(d) " Vocational supportive services" means a method of providing vocational rehabilitation and related services that may include prevocational and educational services to individuals who are unserved or underserved by existing vocational rehabilitation services.

(e) The following four characteristics distinguish " vocational supportive services" from traditional methods of providing vocational rehabilitation and day activity services:

(1) Service recipients appear to lack the potential for unassisted competitive employment.

(2) Ongoing training, supervision, and support services must be provided.

(3) The opportunity is designed to provide the same benefits that other persons receive from work, including an adequate income level, quality of working life, security, and mobility.

(4) There is flexibility in the provision of support which is necessary to enable the person to function effectively at the worksite.

(f) "Community reintegration services" means services as needed by clients, designed to develop, maintain, increase, or maximize independent functioning, with the goal of living in the community and participating in community life. These services may include, but are not limited to, providing, or arranging for access to, housing, transportation, medical care, rehabilitative therapies, day programs, chemical dependency recovery programs, personal assistance, and education.

(g) "Fund" means the Traumatic Brain Injury Fund.

(h) "Supported living services" means a range of appropriate supervision, support, and training in the client's place of residence, designed to maximize independence.

(i) "Functional assessment" means measuring the level or degree of independence, amount of assistance required, and speed and safety considerations for a variety of categories, including activities of daily living, mobility, communication skills, psychosocial adjustment, and cognitive function.

(j) "Residence" means the place where a client makes his or her home, that may include, but is not limited to, a house or apartment where the client lives independently, assistive living arrangements, congregate housing, group homes, residential care facilities, transitional living programs, and nursing facilities.
(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1999, c. 1023 (A.B.1492), § 2.)

REPEAL

For repeal of Chapter 5, see Welfare and Institutions Code § 4359.

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4354.5. Traumatic brain injuries; legislative findings and intent

The Legislature finds and declares the following:

(a) Ascertaining the number of Californians who survive traumatic brain injuries is difficult, but the best estimates are that there are approximately 225,000 survivors who have sustained "closed" or "open" head injuries.

(b) Traumatic brain injuries have a long–term impact on the survivors, their families, caregivers, and support systems.

(c) Long–term care consumers experience great differences in service levels, eligibility criteria, and service availability, resulting in inappropriate and expensive care that fails to be responsive to their needs.

(d) California must develop an action plan with a timetable for implementation to ensure that there will be an array of appropriate services and assistance funded and administered by a state structure that has a focus and commitment to integration and coordination.

(e) The state must pursue, in a timely manner, all available sources of federal financial participation, including, but not limited to, the medicaid home and community–based services waiver program (42 U.S.C. Sec. 1396n(c)) and Part J of Subchapter II of the Public Health Service Act (42 U.S.C. Sec. 280b et seq.).

(f) The department, pursuant to this chapter, has funded and demonstrated, successfully, through four projects for a postacute continuum–of–care model for adults 18 years of age or older with acquired traumatic brain injuries, the array of services and assistance that meet the needs of these individuals and their families.

(g) The state shall replicate these models toward developing a statewide system that has as a goal the support of existing community–based agencies and organizations with a proven record of serving survivors of traumatic brain injuries.

(h) Implementation of the act that added this section shall be consistent with the state's public policy strategy to design a coordinated services delivery system pursuant to Article 4.05 (commencing with Section 14139.05) of Chapter 7 of Part 3 of Division 9.

(Added by Stats.1999, c. 1023 (A.B.1492), § 3.)

REPEAL

For repeal of Chapter 5, see Welfare and Institutions Code § 4359.

§ 4355. Project sites; postacute continuum–of–care models

The department shall designate sites in order to develop a system of postacute continuum–of–care models for adults 18 years of age or older with an acquired traumatic brain injury. The project sites shall coordinate vocational supportive services, community reintegration services, and supported living services. The purpose of the project is to demonstrate the effectiveness of a coordinated service approach which furthers the goal of assisting those persons to attain productive, independent lives which may include paid employment.

(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1999, c. 1023 (A.B.1492), § 4.)

REPEAL

For repeal of Chapter 5, see Welfare and Institutions Code § 4359.

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4356. Pilot sites; additional sites; evaluation; collection of data; report

(a) The department shall provide support to the four original pilot sites.

(b)(1) The department shall award and administer grants to four additional sites, to be selected through a competitive bidding process. One site shall be within each of the regions listed in Section 4357.2. It is the intent of the Legislature that one site be located in a rural area. Implementation of new project sites shall be contingent upon the availability of funds, and new project sites shall be selected on an incremental basis as funds become available.

(2) Priority shall be given to applicants that have proven experience in providing services to persons with an acquired traumatic brain injury including, but not limited to, supported living services, community reintegration services, vocational support services, caregiver support, and family and community education.

(3) The department shall convene a working group, established pursuant to Section 4357.1, to assist them in developing requests for proposals and evaluating bids. In addition, the department shall use this working group as an advisory committee in accordance with requirements of Part J of Subchapter II of the Public Health Service Act (42 U.S.C. Sec. 280b et seq.) in order to pursue available federal funds including, but not limited to, Section 300d–52 of Title 42 of the United States Code.

(4) Each new site shall be in operation within six months following the grant award.

(5) The four additional sites prescribed by this subdivision shall be established to the extent that the availability of federal funds or other appropriate funds permit.

(c)(1) The department, with the advice and assistance of the working group, shall develop an independent evaluation and assist sites in collecting uniform data on all clients.

(2) The evaluation shall test the efficacy, individually and in the aggregate, of the existing and new project sites in the following areas:

(A) The degree of community reintegration achieved by clients, including their increased ability to independently carry out activities of daily living, increased participation in community life, and improved living arrangements.

(B) The improvements in clients' prevocational and vocational abilities, educational attainment, and paid and volunteer job placements.

(C) Client and family satisfaction with services provided.

(D) Number of clients, family members, health and social service professionals, law enforcement professionals, and other persons receiving education and training designed to improve their understanding of the nature and consequences of traumatic brain injury, as well as any documented outcomes of that training and education.

(E) The extent to which participating programs result in reduced state costs for institutionalization or higher levels of care, if such an estimate can be obtained within the 10 percent of funds allowed for the evaluation.

(3) The department shall expend not more than 10 percent of the annual program amount on the evaluation. The evaluator shall be chosen by means of competitive bid and shall report to the department.

(4) The evaluator shall make a final report to the Legislature by January 1, 2005.

(Added by Stats.1999, c. 1023 (A.B.1492), § 6. Amended by Stats.2001, c. 171 (A.B.430), § 20.5, eff. August 10, 2001.)

REPEAL

For repeal of Chapter 5, see Welfare and Institutions Code § 4359.

§ 4357. Site requirements

(a) The sites shall be able to identify the special needs and problems of clients and the services shall be designed to meet those needs.

(b) The sites shall match not less than 20 percent of the amount granted, with the exception of funds used for mentoring. The required match may be cash or in–kind contributions, or a combination of both, from the sites or any cooperating agency. In–kind contributions may include, but shall not be limited to, staff and volunteer services.

(c) The sites shall provide at least 51 percent of their services under the grant to individuals who are Medi–Cal eligible or who have no other identified third–party funding source.

(d) The sites shall provide, directly or by arrangement, a coordinated service model to include all of the following:

(1) Supported living services.

(2) Community reintegration services.

(3) Vocational supportive services.

(4) Information, referral, and, as needed, assistance in identifying, accessing, utilizing, and coordinating all services needed by individuals with traumatic brain injury and their families.

(5) Public and professional education designed to facilitate early identification of persons with brain injury, prompt referral of these persons to appropriate services, and improvement of the system of services available to them.

The model shall be designed and modified with advice from clients and their families, and shall be accessible to the population in need, taking into account transportation, linguistic, and cultural factors.

(e) The sites shall develop and utilize an individual service plan which will allow clients to move from intensive medical rehabilitation or highly structured living arrangements to increased levels of independence and employment. The goals and priorities of each client shall be an integral part of his or her service plan.

(f) The sites shall seek all third–party reimbursements for which clients are eligible and shall utilize all services otherwise available to clients at no cost, including vocational rehabilitation services provided by the Department of Rehabilitation. However, grantees may utilize grant dollars for the purchase of nonreimbursed services or services otherwise unavailable to clients.

(g) The sites shall endeavor to serve a population that is broadly representative with regard to race and ethnicity of the population with traumatic brain injury in their geographical service area, undertaking outreach activities as needed to achieve this goal.

(h) The sites shall maintain a broad network of relationships with local groups of brain injury survivors and families of survivors, as well as local providers of health, social, and vocational services to individuals with traumatic brain injury and their families. The sites shall work cooperatively with these groups and providers to improve and develop needed services and to promote a well–coordinated service system, taking a leadership role as necessary.
(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1999, c. 1023 (A.B.1492), § 7.)

REPEAL

For repeal of Chapter 5, see Welfare and Institutions Code § 4359.

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4357.1. Working group; members; compensation; consultation with department; contracts

(a) The department shall convene a working group including the following persons as selected by the director:

(1) A survivor currently using services in the program.

(2) Two family members of persons surviving traumatic brain injuries, one of whom shall be a family member of a person with significant disabilities resulting from injuries.

(3) A representative of the Brain Injury Association of California.

(4) A representative of each of the existing sites.

(5) A representative of the Caregiver Resource Centers.

(6) A representative of the California Foundation for Independent Living Centers.

(7) A representative of the Public Interest Center for Long–term Care.

(8) A representative of the California Rehabilitation Association.

(9) A member from a survivor's organization.

(10) Representatives of the Department of Rehabilitation and the State Department of Health Services and others as determined by the director.

(b) Members of the working group shall participate without compensation. The working group may be reimbursed by the department for expenses related to the meetings, as determined by the director.

(c) The department shall consult with the working group on the following, as determined by the director:

(1) Development of the evaluation instrument and plan.

(2) Selection and development of the four new sites.

(3) Progress reports and input from participating state or local agencies and the public.

(4) Project implementation, achievements, and recommendations regarding project improvement.

(5) Development of recommended strategies and guidelines for accident prevention and training of peace officers in awareness of brain injury issues. These recommendations shall be made available for use by the department, project sites, other state agencies, and other appropriate entities.

(6) A recommended plan including financial requirements for expansion of the project to all regions of the state to be completed and issued by January 1, 2003.

(d) Contracts awarded pursuant to this part and Part 4 (commencing with Section 4370), including contracts required for administration or ancillary services in support of programs, shall be exempt from the requirements of the Public Contract Code and the State Administrative Manual, and from approval by the Department of General Services.
(Added by Stats.1999, c. 1023 (A.B.1492), § 8.)

REPEAL

For repeal of Chapter 5, see Welfare and Institutions Code § 4359.

§ 4357.2. New sites; location; training, technical assistance, and mentoring; caregiver services

(a) New sites shall be chosen from areas of the state that are not currently served by a site. Two new sites shall be located in the southern portion of the state and two new sites shall be located in the northern portion of the state. Of these, at least one site shall be located in a rural area. Nothing in this chapter shall prohibit a site from serving multiple counties. Implementation of the new sites shall be contingent upon funds appropriated by the Legislature and funds becoming available for this purpose.

(b) The department, in conjunction with the existing sites, shall develop guidelines and procedures for the coordinated continuum–of–care model and its component services. The existing sites shall assist the department in providing orientation, training, and technical assistance to the new sites.

(c) Up to 10 percent of funds allocated to new sites during their first year of operation may be expended for training, technical assistance, and mentoring by existing sites and any other source of assistance appropriate to the needs of the new sites. A plan and budget for technical assistance and mentoring shall be included in the proposals submitted by potential sites.

(d) Mentoring activities shall include, but not be limited to, assisting new sites in refining their continuum–of–care model and its component services, developing guidelines and procedures, and providing advice in meeting the needs of traumatic brain injury survivors and their caregivers, as well as carrying out community outreach and networking with community groups and service providers. Mentoring shall be carried out with the goal of responding to the needs identified by the new sites, transferring the knowledge and expertise of the existing sites, and helping each new site to be successful in developing an effective program that takes into account the needs, resources, and priorities of their local community. Mentoring shall be coordinated with and overseen by the department.

(e) Department staff and site directors shall meet quarterly as a group for ongoing technical assistance, transfer of knowledge, and refinement of the models of continuum of care.

(f) Existing and new sites may allocate up to 15 percent of annual program funds to any appropriate caregiver resource center to assist in caregiver services.
(Added by Stats.1999, c. 1023 (A.B.1492), § 9.)

REPEAL

For repeal of Chapter 5, see Welfare and Institutions Code § 4359.

§ 4358. Traumatic brain injury fund

There is hereby created in the State Treasury the Traumatic Brain Injury Fund, the moneys in which may, upon appropriation by the Legislature, be expended for the purposes of this chapter.
(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991.)

REPEAL

For repeal of Chapter 5, see Welfare and Institutions Code § 4359.

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4358.5. Traumatic brain injury fund; matching federal funds

(a) Funds deposited into the Traumatic Brain Injury Fund pursuant to paragraph (8) of subdivision (f) of Section 1464 of the Penal Code shall be matched by federal vocational rehabilitation services funds for implementation of the Traumatic Brain Injury program pursuant to this chapter. However, this matching of funds shall be required only to the extent it is required by other state and federal law, and to the extent the matching of funds would be consistent with the policies and priorities of the Department of Rehabilitation regarding funding.

(b) The department shall seek and secure funding from available federal resources, including, but not limited to, medicaid and drug and

alcohol funds, utilizing the Traumatic Brain Injury Fund as match and shall seek any necessary waiver of federal program requirements to maximize available federal dollars.
(Added by Stats.1999, c. 1023 (A.B.1492), § 10.)

REPEAL

For repeal of Chapter 5, see Welfare and Institutions Code § 4359.

§ 4359. Duration of chapter

This chapter shall remain in effect until July 1, 2012, and as of that date is repealed, unless a later enacted statute enacted prior to July 1, 2012, extends or deletes that date.
(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1992, c. 508 (S.B.1457), § 2; Stats.1996, c. 197 (A.B.3483), § 14, eff. July 22, 1996; Stats.1999, c. 1023 (A.B.1492), § 11; Stats.2001, c. 171 (A.B.430), § 20.7, eff. August 10, 2001; Stats.2004, c. 414 (A.B.1794), § 2.)

Chapter 6 CONDITIONAL RELEASE PROGRAM

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 4360. Establishment of program; care and services in community; exemptions for services

(a) The department shall provide mental health treatment and supervision in the community for judicially committed persons. The program established and administered by the department under this chapter to provide these services shall be known as the Forensic Conditional Release Program and may be used by the department in accordance with this section to provide services in the community to other patient populations for which the department has direct responsibility.

(b) The department may provide directly, or through contract with private providers or counties, for these services, including administrative and ancillary services related to the provision of direct services. These contracts shall be exempt from the requirements contained in the Public Contract Code and the State Administrative Manual, and from approval by the Department of General Services. Subject to approval by the department, a county or private provider under contract to the department to provide these services may subcontract with private providers for those services.
(Added by Stats.1991, c. 89 (A.B.1288), § 51, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 32, eff. Oct. 7, 1991.)

Chapter 7 COMPREHENSIVE ACT FOR FAMILIES AND CAREGIVERS OF BRAIN–IMPAIRED ADULTS

§ 4362. Legislative findings

The Legislature finds all of the following:

(a) That state public policy discriminates against adults with brain damage or degenerative brain disease, such as Alzheimer's disease. This damage or disease is referred to as "brain impairments" in this chapter.

(b) That the Legislature has declared state public policy and accepted responsibility to ensure that persons under the age of 18 years who are developmentally disabled pursuant to Division 4.5 (commencing with Section 4500), receive services necessary to meet their needs, which are often similar to those of persons who suffer from brain impairments.

(c) That persons over the age of 18 who sustain brain impairment have a variety of program and service needs for which there is no clearly defined, ultimate responsibility vested in any single state agency and for which there are currently a number of different programs attempting to meet their needs.

(d) That the lack of clearly defined ultimate responsibility has resulted in severe financial liability and physical and mental strain on brain–impaired persons, their families, and caregivers.

(e) That terminology and nomenclature used to describe brain impairments are varied and confusing, in part because of different medical diagnoses and professional opinions, as well as differences in terminology used by the various funding sources for programs and services. Uniformity is required in order to ensure that appropriate programs and services are available throughout the state to serve these persons.

(f) That the term "brain damage" covers a wide range of organic and neurological disorders, and that these disorders, as identified below, are not necessarily to be construed as mental illnesses. These disorders include, but are not limited to, all of the following:

(1) Progressive, degenerative, and dementing illnesses, including, but not limited to, presenile and senile dementias, Alzheimer's disease, multiinfarct disease, Pick's disease, and Kreutzfeldt–Jakob's disease.

(2) Degenerative diseases of the central nervous system that can lead to dementia or severe brain impairment, including, but not limited to, epilepsy, multiple sclerosis, Parkinson's disease, amyotrophic lateral sclerosis (ALS), and hereditary diseases such as Huntington's disease.

(3) Permanent damage caused by cerebrovascular accidents more commonly referred to as "strokes," including, but not limited to, cerebral hemorrhage, aneurysm, and embolism.

(4) Posttraumatic, postanoxic, and postinfectious damage caused by incidents, including, but not limited to, coma, accidental skull and closed head injuries, loss of oxygen (anoxia), and infections such as encephalitis, herpes simplex, and tuberculosis.

(5) Permanent brain damage or temporary or progressive dementia as a result of tumors (neoplasm), hydrocephalus, abscesses, seizures, substance toxicity, and other disorders.

(g) That brain damage frequently results in functional impairments that adversely affect personality, behavior, and ability to perform daily activities. These impairments cause dependency on others for care and decisionmaking. The manifestations of brain damage include impairments of memory, cognitive ability, orientation, judgment, emotional response, and social inhibition. Brain damage can strike anyone regardless of age, race, sex, occupation, or economic status.

(h) That Family Survival Project for Brain–Damaged Adults of San Francisco, a three–year pilot project established pursuant to former Chapter 4 (commencing with Section 4330), has demonstrated that the most successful, cost–effective service model is one which allows a nonprofit community agency to provide a full array of support services to families that have a member who suffers from a brain impairment. This agency provides direct services, coordinates existing resources, and assists in the development of new programs and services on a regional basis.

(i) That respite care services provide a combination of time–limited, in–home, and out–of–home services that significantly decrease the stress of family members and increase their ability to maintain a brain–impaired person at home at less cost than other alternatives. This ability is further increased when complemented by case planning, care training, and other support services for family members.

(j) That, since 1977, the State Department of Mental Health has attempted to identify service gaps and determine a cost–effective, feasible approach to funding and providing services to brain–damaged adults, their families, and caregivers. That department has the experience of offering more in the continuum of programs and services than any other state agency and is willing to continue in the lead state agency capacity.

(k) That providing services to brain–impaired adults, and to their families and caregivers, requires the coordinated services of many state departments and community agencies to ensure that no gaps occur in communication, in the availability of programs, or in the provision of services. Although the services may include mental

health interventions, they cannot be met solely by services of the State Department of Mental Health.
(Added by Stats.1992, c. 1374 (A.B.14), § 13, eff. Oct. 28, 1992.)

§ 4362.5. Definitions

As used in this chapter:

(a) "Brain damage," "degenerative brain diseases," and "brain impairment" mean significant destruction of brain tissue with resultant loss of brain function. Examples of causes of the impairments are Alzheimer's disease, stroke, traumatic brain injury, and other impairments described in subdivision (f) of Section 4330.

(b) "Brain–impaired adult" means a person whose brain impairment has occurred after the age of 18.

(c) "Respite care" means substitute care or supervision in support of the caregiver for the purposes of providing relief from the stresses of constant care provision and so as to enable the caregiver to pursue a normal routine and responsibilities. Respite care may be provided in the home or in an out–of–home setting, such as day care centers or short–term placements in inpatient facilities.

(d) "Family member" means any relative or court appointed guardian or conservator who is responsible for the care of a brain–impaired adult.

(e) "Caregiver" means any unpaid family member or individual who assumes responsibility for the care of a brain–impaired adult.
(Added by Stats.1992, c. 1374 (A.B.14), § 13, eff. Oct. 28, 1992.)

§ 4363. Administration; standards and procedures

The director shall administer this chapter and establish standards and procedures, as the director deems necessary in carrying out the provisions of this chapter. The standards and procedures are not required to be adopted as regulations pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).
(Added by Stats.1992, c. 1374 (A.B.14), § 13, eff. Oct. 28, 1992.)

§ 4363.5. Director's duties

The director shall do both of the following:

(a) Contract with a nonprofit community agency meeting the requirements of this chapter to act as the Statewide Resources Consultant, to be selected through a bid procedure.

(b) With the advice of the Statewide Resources Consultant and within four years from the effective date of this chapter, contract with nonprofit community resource agencies, selected in a manner determined by the director, to establish regionally based resource centers in order to ensure the existence of an array of appropriate programs and services for brain–impaired adults. Each resource center shall place a high priority on utilizing community resources in creating opportunities for families to maintain a brain–impaired adult at home when possible and in other community–based alternatives when necessary.
(Added by Stats.1992, c. 1374 (A.B.14), § 13, eff. Oct. 28, 1992.)

§ 4364. Statewide resources consultant; duties

The Statewide Resources Consultant shall do all of the following:

(a) Serve as the centralized information and technical assistance clearinghouse for brain–impaired adults, their families, caregivers, service professionals and agencies, and volunteer organizations, and in this capacity may assist organizations that serve families with adults with Huntington's disease and Alzheimer's disease by reviewing data collected by those organizations in their efforts to determine the means of providing high–quality appropriate care in health facilities and other out–of–home placements; and shall disseminate information, including, but not limited to, the results of research and activities conducted pursuant to its responsibilities set forth in this chapter as determined by the director, and which may include forwarding quality of care and related information to appropriate state departments for consideration.

(b) Work closely and coordinate with organizations serving brain–impaired adults, their families, and caregivers in order to ensure, consistent with requirements for quality of services as may be established by the director, that the greatest number of persons are served and that the optimal number of organizations participate.

(c) Develop and conduct training that is appropriate for a variety of persons, including, but not limited to, all of the following:

(1) Families.

(2) Caregivers and service professionals involved with brain–impaired adults.

(3) Advocacy and self–help family and caregiver support organizations.

(4) Educational institutions.

(d) Provide other training services, including, but not limited to, reviewing proposed training curricula regarding the health, psychological, and caregiving aspects of individuals with brain damage as defined in subdivision (f) of Section 4362. The proposed curricula may be submitted by providers or statewide associations representing individuals with brain damage, their families, or caregivers.

(e) Provide service and program development consultation to resource centers and to identify funding sources that are available.

(f) Assist the appropriate state agencies in identifying and securing increased federal financial participation and third–party reimbursement, including, but not limited to, Title XVIII (42 U.S.C. Sec. 1395 and following) and Title XIX (42 U.S.C. Sec. 1396 and following) of the federal Social Security Act.

(g) Conduct public social policy research based upon the recommendations of the Director of Mental Health.

(h) Assist the director, as the director may require, in conducting directly, or through contract, research in brain damage epidemiology and data collection, and in developing a uniform terminology and nomenclature.

(i) Assist the director in establishing criteria for, and in selecting resource centers and in designing a methodology for, the consistent assessment of resources and needs within the geographic areas to be serviced by the resource centers.

(j) Conduct conferences, as required by the director, for families, caregivers, service providers, advocacy organizations, educational institutions, business associations, community groups, and the general public, in order to enhance the quality and availability of high–quality, low–cost care and treatment of brain–impaired adults.

(k) Make recommendations, after consultation with appropriate state department representatives, to the Director of Mental Health and the Secretary of Health and Welfare for a comprehensive statewide policy to support and strengthen family caregivers, including the provision of respite and other support services, in order to implement more fully this chapter. The Statewide Resources Consultant shall coordinate its recommendations to assist the Health and Welfare Agency to prepare its report on long–term care programs pursuant to Chapter 1.5 (commencing with Section 100145) of Part 1 of Division 101 of the Health and Safety Code.

(*l*) Conduct an inventory and submit an analysis of California's publicly funded programs serving family caregivers of older persons and functionally impaired adults.
(Added by Stats.1992, c. 1374 (A.B.14), § 13, eff. Oct. 28, 1992. Amended by Stats.1995, c. 551 (S.B.472), § 3; Stats.1998, c. 222 (A.B.2622), § 1, eff. July 27, 1998.)

§ 4364.5. Statewide resources consultant; duties regarding respite care

The Statewide Resources Consultant, pursuant to subdivision (c) of Section 4362.5, shall do the following:

(a) Develop respite care training materials, with consultation by other appropriate organizations including the California Association of Homes for the Aging, and under the direction of the director, for distribution to all resource centers established under this chapter.

(b) Provide the respite care training materials described in

subdivision (a) to other appropriate state entities, including the Department of Aging, the State Department of Health Services, and the State Job Training Coordinating Council, for distribution to their respective services and programs.

(c) Pursuant to the requirements of Section 4365.5, report on the utilization of the respite care training materials, developed pursuant to subdivision (a), by all the resource centers for the period ending December 31, 1990, only, and make recommendations for the future use of these materials.

(Added by Stats.1992, c. 1374 (A.B.14), § 13, eff. Oct. 28, 1992.)

§ 4365. Statewide resources consultant; criteria for selection

In choosing an appropriate nonprofit community agency to act as the Statewide Resources Consultant, the director shall give priority to an agency which meets both of the following:

(a) An agency that has a proven record of experience in providing information, technical assistance and direct services to adults with all types of brain impairments, their families, and caregivers.

(b) An agency that includes family members and caregivers of brain–impaired adults on its board of directors.

(Added by Stats.1992, c. 1374 (A.B.14), § 13, eff. Oct. 28, 1992.)

§ 4365.5. Progress reports; annual report

(a) The Statewide Resources Consultant shall submit progress reports on its activities as required by the director. These reports shall include, but not be limited to, a summary and evaluation of the activities of the resource centers. Client, caregiver, service, and cost data shall be provided for each operating resource center.

(b) The department, in consultation with the Statewide Resources Consultant, shall report to the Legislature annually on the effectiveness of the resource centers. The report shall be submitted within six months after the end of each fiscal year. The evaluation shall include, but not be limited to, all of the following:

(1) The costs and amount of each type of service provided.

(2) An assessment of the nature and extent of the demand for services which provide respite, and an evaluation of their success in meeting this demand.

(3) Recommendations for improving the effectiveness of the program in deterring the institutionalization of brain–impaired adults, allowing caregivers to maintain a normal routine and promoting the continuance of quality care for brain–impaired adults.

(4) Recommendations for ensuring that unmet needs of brain–impaired persons and their families are identified and addressed with appropriate programs and services.

(Added by Stats.1992, c. 1374 (A.B.14), § 13, eff. Oct. 28, 1992.)

§ 4366. Resource centers; functions

Resource centers shall serve all of the following functions:

(a) Provide directly or assist families in securing information, advice, and referral services, legal services and financial consultation, planning and problem–solving consultation, family support services, and respite care services, as specified in Section 4338.

(b) Provide centralized access to information about, and referrals to, local, state, and federal services and programs in order to assure a comprehensive approach for brain–impaired adults, their families, and caregivers. Nothing in this chapter shall prohibit access to services through other organizations which provide similar programs and services to brain–impaired adults and their families, nor shall other organizations be prevented from providing these programs and services.

(c) Assist in the identification and documentation of service needs and the development of necessary programs and services to meet the needs of brain–impaired adults in the geographic area.

(d) Cooperate with the Statewide Resources Consultant and the Director of Mental Health in any activities which they deem necessary for the proper implementation of this chapter.

(e) Work closely and coordinate with organizations serving brain–impaired adults, their families, and caregivers in order to ensure, consistent with requirements for quality of services as may be established by the director, that the greatest number of persons are served and that the optimal number of organizations participate.

(Added by Stats.1992, c. 1374 (A.B.14), § 13, eff. Oct. 28, 1992.)

§ 4366.5. Resource centers; governing or advisory boards; selection criteria

(a) Agencies designated as resource centers by the director after consultation with the Statewide Resources Consultant shall include in their governing or advisory boards, or both, as required by the director, persons who are representative of the ethnic and socioeconomic character of the area served and the client groups served in the geographic area.

(b) Criteria to be used in selecting resource centers shall include, but not be limited to, the following:

(1) Fiscal stability and sound financial management, including the capability of successful fundraising.

(2) Ability to obtain community support for designation as a resource center with the region recommended by the director.

(3) Demonstrated ability to carry out the functions specified in Section 4366, particularly in delivering necessary programs and services to brain–impaired adults as defined in subdivision (c) of Section 4362.

(Added by Stats.1992, c. 1374 (A.B.14), § 13, eff. Oct. 28, 1992.)

§ 4367. Programs and services; use of funds; direct services

Resource centers shall carry out the functions specified in Section 4366 through the administration and provision of programs and services that reflect the most progressive care and treatment alternatives available for brain–impaired adults, their families, and caregivers. These programs and services may be provided directly or through the establishment of subcontracts as specified in their contract and within the limitations imposed by budget appropriations. The department shall make efforts to achieve a goal that not less than 90 percent of the funds appropriated through contracts with resource centers shall be utilized for direct services, including, but not limited to, the following:

(a) Information, advice, and referral and family support services, including, but not limited to, all of the following:

(1) Information and counseling about diagnostic procedures and resources.

(2) Long–term care planning and consultation.

(3) Legal and financial resources, consultation, and representation.

(4) Mental health interventions.

(5) Caregiving techniques.

(b) Respite care services through the flexible and creative use of existing local resources, including, but not limited to, all of the following:

(1) In–home care.

(2) Adult day health and social day care services.

(3) Foster and group care.

(4) Temporary placement in a community or health facility.

(5) Transportation.

(c) Training and education programs for brain–impaired adults, their family members, caregivers, and service providers that will lead to the high–quality, low–cost care and treatment of service clients.

(Added by Stats.1992, c. 1374 (A.B.14), § 13, eff. Oct. 28, 1992.)

§ 4367.5. Client eligibility

The director shall establish criteria for client eligibility, including financial liability, pursuant to Section 4368. However, persons eligible for services provided by regional centers or the State Department of Developmental Services are not eligible for services provided under this chapter. Income shall not be the sole basis for client eligibility. The director shall assume responsibility for the coordination of existing funds and services for brain–impaired adults, and for the purchase of respite care, as defined in subdivision (c) of

Section 4362.5, with other departments that may serve brain–impaired adults, including the Department of Rehabilitation, the State Department of Health Services, the State Department of Social Services, the State Department of Developmental Services, the Department of Aging, the Office of Statewide Health Planning and Development, and the State Department of Alcohol and Drug Programs.
(Added by Stats.1992, c. 1374 (A.B.14), § 13, eff. Oct. 28, 1992.)

§ 4368. Client contributions

Persons receiving services pursuant to this chapter may be required to contribute to the cost of services depending upon their ability to pay, but not to exceed the actual cost thereof. The criteria for determining client contributions which may be paid to the resource center under this chapter and standards for their utilization by the resource center in developing new programs and services shall be determined by the director after consultation with the Statewide Resources Consultant.
(Added by Stats.1992, c. 1374 (A.B.14), § 13, eff. Oct. 28, 1992.)

§ 4368.5. Funding

In considering total service funds available for the project, the director shall utilize funding available from appropriate state departments, including, but not limited to: the State Department of Health Services, the State Department of Social Services, the Department of Rehabilitation, the Department of Aging, and the State Department of Alcohol and Drug Programs. The director in conjunction with the Statewide Resources Consultant shall coordinate his or her activities with the implementation of the Torres–Felando Long–Term Care Reform Act (Chapter 1453, Statutes of 1982) in order to further the goal of obtaining comprehensive, coordinated public policy and to maximize the availability of funding for programs and services for persons with brain impairments.
(Added by Stats.1992, c. 1374 (A.B.14), § 13, eff. Oct. 28, 1992.)

Chapter 8 STATE PROGRAM OF PROBLEM GAMBLING

CONTINGENT OPERATION

Operation of Chapter 8 is contingent upon appropriation of funds, see Welfare and Institutions Code § 4369.5.

§ 4369. Office of Problem and Pathological Gambling; creation

There is within the State Department of Alcohol and Drug Programs, the Office of Problem and Pathological Gambling.
(Added by Stats.1997, c. 867 (S.B.8), § 61. Amended by Stats.2003, c. 210 (A.B.673), § 3, eff. Aug. 11, 2003.)

§ 4369.1. Definitions

As used in this chapter, the following definitions shall apply:

(a) "Department" means the State Department of Alcohol and Drug Programs.

(b) "Office" means the Office of Problem and Pathological Gambling.

(c) "Pathological gambling disorder" means a progressive mental disorder meeting the diagnostic criteria set forth by the American Psychiatric Association's Diagnostic and Statistical Manual, Fourth Edition.

(d) "Problem gambling" means participation in any form of gambling to the extent that it creates a negative consequence to the gambler, the gambler's family, place of employment, or community. This includes patterns of gambling and subsequent related behaviors that compromise, disrupt, or damage personal, family, educational, financial, or vocational interests. The problem gambler does not meet the diagnostic criteria for pathological gambling disorder.

(e) "Problem gambling prevention programs" means programs designed to reduce the prevalence of problem and pathological gambling among California residents. These programs shall include, but are not limited to, public education and awareness, outreach to high–risk populations, early identification and responsible gambling programs.
(Added by Stats.1997, c. 867 (S.B.8), § 61. Amended by Stats.2003, c. 210 (A.B.673), § 4, eff. Aug. 11, 2003.)

§ 4369.2. Problem gambling prevention program; contents and requirements of program; treatment services for problem and pathological gamblers; information availability

(a) The office shall develop a problem gambling prevention program, which shall be the first priority for funding appropriated to this office. The prevention program shall be based upon the allocation priorities established by the department and subject to funding being appropriated for the purpose of this subdivision, and shall consist of all of the following:

(1) A toll–free telephone service for immediate crisis management and containment with subsequent referral of problem and pathological gamblers to health providers who can provide treatment for gambling related problems and to self–help groups.

(2) Public awareness campaigns that focus on prevention and education among the general public including, for example, dissemination of youth oriented preventive literature, educational experiences, and public service announcements in the media.

(3) Empirically driven research programs focusing on epidemiology/prevalence, etiology/causation, and best practices in prevention and treatment.

(4) Training of health care professionals and educators, and training for law enforcement agencies and nonprofit organizations in the identification of problem gambling behavior and knowledge of referral services and treatment programs.

(5) Training of gambling industry personnel in identifying customers at risk for problem and pathological gambling and knowledge of referral and treatment services.

(b) The office shall develop a program to support treatment services for California residents with problem and pathological gambling issues. The program shall be based upon the allocation priorities established by the department and subject to funding being appropriated for the purposes of this subdivision. These priorities shall also be based on the best available existing state programs as well as on continuing research into best practices and on the needs of California. The treatment program shall consist of all of the following components:

(1) Treatment services for problem and pathological gamblers and directly involved family members. These treatment services will be created through partnerships with established health facilities that can provide treatment for gambling related problems, substance abuse facilities, and providers. State funded treatment may include, but is not limited to, the following: self–administered, home–based educational programs; outpatient treatment; residential treatment; and inpatient treatment when medically necessary.

(2) A funding allocation methodology that ensures treatment services are delivered efficiently and effectively to areas of the state most in need.

(3) Appropriate review and monitoring of treatment programs by the director of the office or a designated institution, including grant oversight and monitoring, standards for treatment, and outcome monitoring.

(4) Treatment efforts shall provide services that are relevant to the needs of a diverse multicultural population with attention to groups with unique needs, including female gamblers, underserved ethnic groups, the elderly, and the physically challenged.

(c) The office shall make information available as requested by the Governor and the Legislature with respect to the comprehensive program.
(Added by Stats.1997, c. 867 (S.B.8), § 61. Amended by Stats.2003, c. 210 (A.B.673), § 5, eff. Aug. 11, 2003.)

§ 4369.3. Program design and development; office duties

In designing and developing the overall program, the office shall do all of the following:

(a) Develop a statewide plan to address problem and pathological gambling.

(b) Adopt any regulations necessary to administer the program.

(c) Develop priorities for funding services and criteria for distributing program funds.

(d) Monitor the expenditures of state funds by agencies and organizations receiving program funding.

(e) Evaluate the effectiveness of services provided through the program.

(f) Notwithstanding any other provision of law, any contracts required to meet the requirements of this chapter are exempt from the requirements contained in the Public Contract Code and the State Administrative Manual, and are exempt from the approval of the Department of General Services.

(g) The first and highest priority of the office with respect to the use of any funds appropriated for the purposes of this chapter shall be to carry out subdivision (a).

(h) Administrative costs for the program may not exceed 10 percent of the total funding budgeted for the program.
(Added by Stats.1997, c. 867 (S.B.8), § 61. Amended by Stats.2003, c. 210 (A.B.673), § 6, eff. Aug. 11, 2003.)

§ 4369.4. State agency coordination; state program account of problem and pathological gamblers

All state agencies, including, but not limited to, the California Horse Racing Board, the California Gambling Control Commission, the Department of Justice, and any other agency that regulates casino gambling or cardrooms within the state, and the Department of Corrections, the California Youth Authority, the State Departments of Health Services, Alcohol and Drug Programs, and Mental Health, and the California State Lottery, shall coordinate with the office to ensure that state programs take into account, as much as practicable, problem and pathological gamblers. The office shall also coordinate and work with other entities involved in gambling and the treatment of problem and pathological gamblers.
(Added by Stats.1997, c. 867 (S.B.8), § 61. Amended by Stats.2003, c. 210 (A.B.673), § 7, eff. Aug. 11, 2003.)

Part 4 SCHOOL–BASED EARLY MENTAL HEALTH INTERVENTION AND PREVENTION SERVICES FOR CHILDREN ACT

Chapter 1 GENERAL PROVISIONS AND DEFINITIONS

§ 4370. Short title

This part shall be known and may be cited as the School–based Early Mental Health Intervention and Prevention Services for Children Act of 1991.
(Added by Stats.1991, c. 757 (A.B.1650), § 1, eff. Oct. 9, 1991.)

§ 4371. Legislative findings and declaration

The Legislature finds and declares all of the following:

(a) Each year in California over 65,000 teenagers become adolescent mothers and 230 teenagers commit suicide. Each year more than 20 percent of California's teenagers drop out of high school.

(b) Thirty percent of California's elementary school pupils experience school adjustment problems, many of which are evident the first four years of school, that is, kindergarten and grades 1 to 3, inclusive.

(c) Problems that our children experience, whether in school or at home, that remain undetected and untreated grow and manifest themselves in all areas of their later lives.

(d) There is a clear relationship between early adjustment problems and later adolescent problems, including, but not limited to, poor school attendance, low achievement, delinquency, drug abuse, and high school dropout rates. In many cases, signs of these problems can be detected in the early grades.

(e) It is in California's best interest, both in economic and human terms, to identify and treat the minor difficulties that our children are experiencing before those difficulties become major barriers to later success. It is far more humane and cost–effective to make a small investment in early mental health intervention and prevention services now and avoid larger costs, including, but not limited to, foster care, group home placement, intensive special education services, mental health treatment, or probation supervised care.

(f) Programs like the Primary Intervention Program and the San Diego Unified Counseling Program for Children have proven very effective in helping children adjust to the school environment and learn more effective coping skills that in turn result in better school achievement, increased attendance, and increased self–esteem.

(g) To create the optimum learning environment for our children, schools, teachers, parents, public and private service providers, and community–based organizations must enter into locally appropriate cooperative agreements to ensure that all pupils will receive the benefits of school–based early mental health intervention and prevention services that are designed to meet their personal, social, and educational needs.
(Added by Stats.1991, c. 757 (A.B.1650), § 1, eff. Oct. 9, 1991. Amended by Stats.1992, c. 722 (S.B.485), § 22, eff. Sept. 15, 1992.)

§ 4372. Definitions

For the purposes of this part, the following definitions shall apply:

(a) "Cooperating entity" means any federal, state, or local, public or private nonprofit agency providing school–based early mental health intervention and prevention services that agrees to offer services at a schoolsite through a program assisted under this part.

(b) "Eligible pupil" means a pupil who attends a publicly funded elementary school and who is in kindergarten or grades 1 to 3, inclusive.

(c) "Local educational agency" means any school district or county office of education, or state special school.

(d) "Director" means the State Director of Mental Health.

(e) "Supportive service" means a service that will enhance the mental health and social development of children.
(Added by Stats.1991, c. 757 (A.B.1650), § 1, eff. Oct. 9, 1991. Amended by Stats.1992, c. 722 (S.B.485), § 23, eff. Sept. 15, 1992.)

Chapter 2 SCHOOL–BASED EARLY MENTAL HEALTH INTERVENTION AND PREVENTION SERVICES MATCHING GRANT PROGRAM

§ 4380. Award of matching grants; authorization; time; state and local shares; priority; supportive services; applications; use

Subject to the availability of funding each year, the Legislature authorizes the director, in consultation with the Secretary of Child Development and Education and the Superintendent of Public Instruction, to award matching grants to local educational agencies to pay the state share of the costs of providing programs that provide school–based early mental health intervention and prevention services to eligible pupils at schoolsites of eligible pupils, as follows:

(a) The director shall award matching grants pursuant to this chapter to local educational agencies throughout the state.

(b) Matching grants awarded under this part shall be awarded for a period of not more than three years and no single schoolsite shall be

awarded more than one grant, except for a schoolsite that received a grant prior to July 1, 1992.

(c) The director shall pay to each local educational agency having an application approved pursuant to requirements in this part the state share of the cost of the activities described in the application.

(d) Commencing July 1, 1993, the state share of matching grants shall be a maximum of 50 percent in each of the three years.

(e) Commencing July 1, 1993, the local share of matching grants shall be at least 50 percent, from a combination of school district and cooperating entity funds.

(f) The local share of the matching grant may be in cash or payment in–kind.

(g) Priority shall be given to those applicants that demonstrate the following:

(1) The local educational agency will serve the greatest number of eligible pupils from low–income families.

(2) The local educational agency will provide a strong parental involvement component.

(3) The local educational agency will provide supportive services with one or more cooperating entities.

(4) The local educational agency will provide services at a low cost per child served in the project.

(5) The local educational agency will provide programs and services that are based on adoption or modification, or both, of existing programs that have been shown to be effective. No more than 20 percent of the grants awarded by the director may be utilized for new models.

(6) The local educational agency will provide services to children who are in out–of–home placement or who are at risk of being in out–of–home placement.

(h) Eligible supportive services may include the following:

(1) Individual and group intervention and prevention services.

(2) Parent involvement through conferences or training, or both.

(3) Teacher and staff conferences and training related to meeting project goals.

(4) Referral to outside resources when eligible pupils require additional services.

(5) Use of paraprofessional staff, who are trained and supervised by credentialed school psychologists, school counselors, or school social workers, to meet with pupils on a short–term weekly basis, in a one–on–one setting as in the Primary Intervention Program established pursuant to Chapter 4 (commencing with Section 4343) of Part 3. A minimum of 80 percent of the grants awarded by the director shall include the basic components of the Primary Intervention Program.

(6) Any other service or activity that will improve the mental health of eligible pupils.

Prior to participation by an eligible pupil in either individual or group services, consent of a parent or guardian shall be obtained.

(i) Each local educational agency seeking a grant under this chapter shall submit an application to the director at the time, in a manner, and accompanied by any information the director may reasonably require.

(j) Each matching grant application submitted shall include all of the following:

(1) Documentation of need for the school–based early mental health intervention and prevention services.

(2) A description of the school–based early mental health intervention and prevention services expected to be provided at the schoolsite.

(3) A statement of program goals.

(4) A list of cooperating entities that will participate in the provision of services. A letter from each cooperating entity confirming its participation in the provision of services shall be included with the list. At least one letter shall be from a cooperating entity confirming that it will agree to screen referrals of low–income children the program has determined may be in need of mental health treatment services and that, if the cooperating entity determines that the child is in need of those services and if the cooperating entity determines that according to its priority process the child is eligible to be served by it, the cooperating entity will agree to provide those mental health treatment services.

(5) A detailed budget and budget narrative.

(6) A description of the proposed plan for parent involvement in the program.

(7) A description of the population anticipated to be served, including number of pupils to be served and socioeconomic indicators of sites to receive funds.

(8) A description of the matching funds from a combination of local education agencies and cooperating entities.

(9) A plan describing how the proposed school–based early mental health intervention and prevention services program will be continued after the matching grant has expired.

(10) Assurance that grants would supplement and not supplant existing local resources provided for early mental health intervention and prevention services.

(11) A description of an evaluation plan that includes quantitative and qualitative measures of school and pupil characteristics, and a comparison of children's adjustment to school.

(k) Matching grants awarded pursuant to this article may be used for salaries of staff responsible for implementing the school–based early mental health intervention and prevention services program, equipment and supplies, training, and insurance.

(*l*) Salaries of administrative staff and other administrative costs associated with providing services shall be limited to 5 percent of the state share of assistance provided under this section.

(m) No more than 10 percent of each matching grant awarded pursuant to this article may be used for matching grant evaluation.

(n) No more than 10 percent of the moneys allocated to the director pursuant to this chapter may be utilized for program administration and evaluation.

Program administration shall include both state staff and field staff who are familiar with and have successfully implemented school–based early mental health intervention and prevention services. Field staff may be contracted with by local school districts or community mental health programs. Field staff shall provide support in the timely and effective implementation of school–based early mental health intervention and prevention services. Reviews of each project shall be conducted at least once during the first year of funding.

(*o*) Subject to the approval of the director, at the end of the fiscal year, a school district may apply unexpended funds to the budget for the subsequent funding year.

(p) Contracts for the program and administration, or ancillary services in support of the program, shall be exempt from the requirements of the Public Contract Code and the State Administrative Manual, and from approval by the Department of General Services.

(Added by Stats.1991, c. 757 (A.B.1650), § 1, eff. Oct. 9, 1991. Amended by Stats.1992, c. 23 (S.B.984), § 1, eff. April 1, 1992; Stats.1992, c. 722 (S.B.485), § 24, eff. Sept. 15, 1992; Stats.2002, c. 1161 (A.B.442), § 26, eff. Sept. 30, 2002; Stats.2003–2004, 1st Ex.Sess., c. 9 (S.B.26), § 2, eff. May 5, 2003.)

§ 4381. Conditions for funding

No funding shall be made available to any program or facility pursuant to this chapter unless all of the following conditions are met:

(a) The program facility is open to children without regard to any child's religious beliefs or any other factor related to religion.

(b) No religious instruction is included in the program.

(c) The space in which the program is operated is not utilized in any manner to foster religion during the time used for the program.

(Added by Stats.1991, c. 757 (A.B.1650), § 1, eff. Oct. 9, 1991.)

§ 4383. Award of funds under this part and healthy start support services for children act; criteria

(a) For the 1991–92 and 1992–93 fiscal years, a local schoolsite may be awarded funding from the director pursuant to this part and from the Superintendent of Public Instruction pursuant to the Healthy Start Support Services for Children Act of 1991 (Chapter 5 (commencing with Section 8800) of Part 6 of the Education Code) if both of the following criteria are met:

(1) The application to the director for funding under this part delineates how the program will coordinate and interface with, and is not duplicative of, the program proposed for funding under the Healthy Start Support Services for Children Act of 1991.

(2) The application to the Superintendent of Public Instruction for funding under the Healthy Start Support Services for Children Act of 1991 delineates how the program will coordinate and interface with, and is not duplicative of, this part.

(b) Up to 20 percent of the schoolsites which receive operational grants from the Healthy Start Support Services for Children program and which apply for grants under this part may receive these grants. The State Department of Mental Health and the State Department of Education shall jointly review the effectiveness of providing both grants to a single schoolsite and make this information available no later than January 1, 1993.

(Added by Stats.1992, c. 23 (S.B.984), § 2, eff. April 1, 1992.)

Chapter 3 SCHOOL–BASED EARLY MENTAL HEALTH INTERVENTION AND PREVENTION SERVICES MATCHING GRANT PROGRAM EVALUATIONS AND REPORTS

§ 4390. Reports of local education agencies and director; evaluation

The Legislature finds that an evaluation of program effectiveness is both desirable and necessary and accordingly requires the following:

No later than June 30, 1993, and each year thereafter through the term of the grant award, each local education agency that receives a matching grant under this part shall submit a report to the director that shall include the following:

(a) An evaluation of the effectiveness of the local educational agency in achieving stated goals.

(b) A description of the problems encountered in the design and operation of the school–based early mental health intervention and prevention services program, including, but not limited to, identification of any federal, state, or local regulations that impeded program implementation.

(c) The number of eligible pupils served by the program.

(d) The number of additional eligible pupils who have not been served.

(e) An evaluation of the impact of the school–based early mental health intervention and prevention services program on the local educational agency and the children completing the program. The program shall be deemed successful if at least 75 percent of the children who complete the program show an improvement in at least one of the four following areas:

(1) Learning behaviors.

(2) Attendance.

(3) School adjustment.

(4) School–related competencies. Improvement shall be compared with comparable children in that school district that do not complete or participate in the program.

(f) An accounting of local budget savings, if any, resulting from the implementation of the school–based early mental health intervention and prevention services program.

(g) A revised plan of how the proposed school–based early mental health intervention and prevention services program will be continued after the state matching grant has expired, including a list of cooperative entities that will assist in providing the necessary funds and services. Beginning in 1993, this shall, to the extent information is provided by the local mental health department, include a description of the availability of federal financial participation under Title XIX of the federal Social Security Act (42 U.S.C. 1396 and following) through a cooperative agreement or contract with the local mental health department. The county office of education may submit the report on the availability of federal financial participation on behalf of the participating local education agencies with the county. In any county in which there is an interagency children's services coordination council established pursuant to Section 18986.10, a report submitted pursuant to this paragraph shall be submitted to the council for its review and approval.

(Added by Stats.1991, c. 757 (A.B.1650), § 1, eff. Oct. 9, 1991. Amended by Stats.1992, c. 23 (S.B.984), § 3, eff. April 1, 1992; Stats.1992, c. 722 (S.B.485), § 25, eff. Sept. 15, 1992; Stats.2004, c. 193 (S.B.111), § 214.)

WELFARE AND INSTITUTIONS CODE — DEVELOPMENTALLY DISABLED

Division 4.5 SERVICES FOR THE DEVELOPMENTALLY DISABLED

Chapter 1 GENERAL PROVISIONS

§ 4514. Confidential information and records; disclosure; consent

All information and records obtained in the course of providing intake, assessment, and services under Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities 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, whether employed by a regional center or state developmental center, or not, in the provision of intake, assessment, and services or appropriate referrals. The consent of the person with a developmental disability, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by regional center or state developmental center personnel to a professional not employed by the regional center or state developmental center, or a program not vendored by a regional center or state developmental center.

(b) When the person with a developmental disability, who has the capacity to give informed consent, designates individuals to whom information or records may be released, except that nothing in this chapter shall be construed to compel a physician, psychologist, social worker, marriage and family therapist, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(c) To the extent necessary for a claim, or for a claim or application

to be made on behalf of a person with a developmental disability for aid, insurance, government benefit, or medical assistance to which he or she may be entitled.

(d) If the person with a developmental disability is a minor, ward, or conservatee, and his or her parent, guardian, conservator, or limited conservator with access to confidential records, designates, in writing, persons to whom records or information may be disclosed, except that nothing in this chapter shall be construed to compel a physician, psychologist, social worker, marriage and family therapist, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(e) For research, provided that 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. These rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

"_____"
Date

As a condition of doing research concerning persons with developmental disabilities who have received services from ___ (fill in the facility, agency or person), I, _____, agree to obtain the prior informed consent of 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, or the person's parent, guardian, or conservator, and I further agree not to divulge any information obtained in the course of the research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services so those persons who received services are 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.

_____"
Signed

(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 Senate Committee on Rules or the Assembly Committee on Rules for the purposes of legislative investigation authorized by the committee.

(i) To the courts and designated parties as part of a regional center report or assessment in compliance with a statutory or regulatory requirement, including, but not limited to, Section 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the Penal Code, Section 6502 of the Welfare and Institutions Code, and Section 56557 of Title 17 of the California Code of Regulations.

(j) To the attorney for the person with a developmental disability in any and all proceedings upon presentation of a release of information signed by the person, except that when the person lacks the capacity to give informed consent, the regional center or state developmental center director or designee, upon satisfying himself or herself of the identity of the attorney, and of the fact that the attorney represents the person, shall release all information and records relating to the person except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage and family therapist, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(k) Upon written consent by a person with a developmental disability previously or presently receiving services from a regional center or state developmental center, the director of the regional center or state developmental center, or his or her designee, may release any information, except information that has been given in confidence by members of the family of the person with developmental disabilities, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the regional center or state developmental center director or designee determines that the information is relevant to the evaluation. The consent 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 18951. 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 18950) of Part 6 of Division 9.

(m) When a person with a developmental disability dies from any cause, natural or otherwise, while hospitalized in a state developmental center, the State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall release information and records to the coroner. The State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall not release any notes, summaries, transcripts, tapes, or records of conversations between the resident and health professional personnel of the hospital relating to the personal life of the resident that is not related to the diagnosis and treatment of the resident's physical condition. Any information released to the coroner pursuant to this section shall remain confidential and shall be sealed and shall not be made part of the public record.

(n) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Services, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities, and to ensure that the standards of care and services provided in these facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Health Services or the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names which are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Health Services or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Health Services or the State Department of Social Services shall not contain the name of the person with a developmental disability.

(*o*) To any board which licenses and certifies professionals in the fields of mental health and developmental disabilities pursuant to state law, when the Director of Developmental Services has reasonable cause to believe that there has occurred a violation of any provision of law subject to the jurisdiction of a board and the records are relevant to the violation. The information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the person with a developmental disability.

(p) To governmental law enforcement agencies by the director of a regional center or state developmental center, or his or her designee, when (1) the person with a developmental disability has been reported lost or missing or (2) there is probable cause to believe that a person with a developmental disability has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, robbery, carjacking, assault with the intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, assault or battery, or unlawful possession of a weapon, as provided in Section 12020 of the Penal Code.

This subdivision shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her treatment unless relevant to the crime involved.

This subdivision shall not be construed as an exception to, or in any other way affecting, the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, or Chapter 11 (commencing with Section 15600) and Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(q) To the Youth Authority and Adult Correctional Agency or any component thereof, as necessary to the administration of justice.

(r) To an agency mandated to investigate a report of abuse filed pursuant to either Section 11164 of the Penal Code or Section 15630 of the Welfare and Institutions Code for the purposes of either a mandated or voluntary report or when those agencies request information in the course of conducting their investigation.

(s) When a person with developmental disabilities, or the parent, guardian, or conservator of a person with developmental disabilities who lacks capacity to consent, fails to grant or deny a request by a regional center or state developmental center to release information or records relating to the person with developmental disabilities within a reasonable period of time, the director of the regional or developmental center, or his or her designee, may release information or records on behalf of that person provided both of the following conditions are met:

(1) Release of the information or records is deemed necessary to protect the person's health, safety, or welfare.

(2) The person, or the person's parent, guardian, or conservator, has been advised annually in writing of the policy of the regional center or state developmental center for release of confidential client information or records when the person with developmental disabilities, or the person's parent, guardian, or conservator, fails to respond to a request for release of the information or records within a reasonable period of time. A statement of policy contained in the client's individual program plan shall be deemed to comply with the notice requirement of this paragraph.

(t)(1) When an employee is served with a notice of adverse action, as defined in Section 19570 of the Government Code, the following information and records may be released:

(A) All information and records that the appointing authority relied upon in issuing the notice of adverse action.

(B) All other information and records that are relevant to the adverse action, or that would constitute relevant evidence as defined in Section 210 of the Evidence Code.

(C) The information described in subparagraphs (A) and (B) may be released only if both of the following conditions are met:

(i) The appointing authority has provided written notice to the consumer and the consumer's legal representative or, if the consumer has no legal representative or if the legal representative is a state agency, to the clients' rights advocate, and the consumer, the consumer's legal representative, or the clients' rights advocate has not objected in writing to the appointing authority within five business days of receipt of the notice, or the appointing authority, upon review of the objection has determined that the circumstances on which the adverse action is based are egregious or threaten the health, safety, or life of the consumer or other consumers and without the information the adverse action could not be taken.

(ii) The appointing authority, the person against whom the adverse action has been taken, and the person's representative, if any, have entered into a stipulation that does all of the following:

(I) Prohibits the parties from disclosing or using the information or records for any purpose other than the proceedings for which the information or records were requested or provided.

(II) Requires the employee and the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents or copies thereof that are no longer in the possession of the employee or the employee's legal representative because they were from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final except for the actual records and documents submitted to the administrative tribunal as a component of an appeal from the adverse action.

(III) Requires the parties to submit the stipulation to the administrative tribunal with jurisdiction over the adverse action at the earliest possible opportunity.

(2) For the purposes of this subdivision, the State Personnel Board may, prior to any appeal from adverse action being filed with it, issue a protective order, upon application by the appointing authority, for the limited purpose of prohibiting the parties from disclosing or using information or records for any purpose other than the proceeding for which the information or records were requested or provided, and to require the employee or the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final, except for the actual records and documents that are no longer in the possession of the employee or the employee's legal representatives because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(3) Individual identifiers, including, but not limited to, names, social security numbers, and hospital numbers, that are not necessary for the prosecution or defense of the adverse action, shall not be disclosed.

(4) All records, documents, or other materials containing confidential information protected by this section that have been submitted or otherwise disclosed to the administrative agency or other person as a component of an appeal from an adverse action shall, upon proper motion by the appointing authority to the administrative tribunal, be placed under administrative seal and shall not, thereafter, be subject to disclosure to any person or entity except upon the issuance of an order of a court of competent jurisdiction.

(5) For purposes of this subdivision, an adverse action becomes final when the employee fails to answer within the time specified in Section 19575 of the Government Code, or, after filing an answer, withdraws the appeal, or, upon exhaustion of the administrative appeal or of the judicial review remedies as otherwise provided by law.

(Added by Stats.1982, c. 1141, § 1. Amended by Stats.1985, c. 994, § 1; Stats.1985, c. 1121, § 1.5; Stats.1989, c. 897, § 45; Stats.1990, c. 693 (A.B.3403), § 1; Stats.1991, c. 534 (S.B.1088), § 4; Stats.1993,

c. 610 (A.B.6), § 31, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 35, eff. Oct. 1, 1993; Stats.2002, c. 1013 (S.B.2026), § 96; Stats.2004, c. 406 (S.B.1819), § 1.)

§ 4514.3. Disclosure of information and records to protection and advocacy agency for rights of persons with developmental disabilities

(a) Notwithstanding Section 4514, information and records shall be disclosed to the protection and advocacy agency designated by the Governor in this state to fulfill the requirements and assurances of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, contained in Chapter 144 (commencing with Section 15001) of Title 42 of the United States Code, for the protection and advocacy of the rights of persons with developmental disabilities, as defined in Section 15002(8) of Title 42 of the United States Code.

(b) Access to information and records to which subdivision (a) applies shall be in accord with Division 4.7 (commencing with Section 4900).

(Added by Stats.1991, c. 534 (S.B.1088), § 3. Amended by Stats.2003, c. 878 (S.B.577), § 3.)

§ 4514.5. Information to patient's family or designee; patient authorization

Upon request of a family member of a resident of a state hospital, community care facility, or health facility, or other person designated by the resident, the facility shall give such family member or the designee notification of the resident's presence in the facility, the transfer, the diagnosis, the prognosis, the medications prescribed, the side effects of medications prescribed, if any, the progress of the resident, and the serious illness of the resident, if, after notification of the resident that such information is requested, the resident authorizes such disclosure. If, when initially informed of the request for notification, the resident is unable to authorize the release of such information, notation of the attempt shall be made into the resident's treatment record, and daily efforts shall be made to secure the resident's consent or refusal of such authorization. However, if a request for information is made by the spouse, parent, child, or sibling of the resident and the resident is unable to authorize the release of such information, such requester shall be given notification of the resident's presence in the facility, except to the extent prohibited by federal law. Upon request of a family member of a resident or the designee, the facility shall notify such family member or designee of the release or death of the resident. Nothing in this section shall be construed to require photocopying of the resident's medical records in order to satisfy its provisions.

(Added by Stats.1982, c. 1141, § 2.)

WELFARE AND INSTITUTIONS CODE — PROTECTION AND ADVOCACY AGENCY

Division 4.7 PROTECTION AND ADVOCACY AGENCY

Chapter 1 DEFINITIONS

§ 4900. Definitions

(a) The definitions contained in this section shall govern the construction of this division, unless the context requires otherwise. These definitions shall not be construed to alter or impact the definitions or other provisions of the Elder and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600), or Chapter 13 (commencing with Section 15750), of Part 3 of Division 9.

(b) "Abuse" means an act, or failure to act, that would constitute abuse as that term is defined in federal regulations pertaining to the authority of protection and advocacy agencies, including Section 51.2 of Title 42 of the Code of Federal Regulations or Section 1386.19 of Title 45 of the Code of Federal Regulations. " Abuse" also means an act, or failure to act, that would constitute abuse as that term is defined in Section 15610.07 of the Welfare and Institutions Code or Section 11165.6 of the Penal Code.

(c) "Complaint" has the same meaning as "complaint" as defined in federal statutes and regulations pertaining to the authority of protection and advocacy agencies, including Section 10802(1) of Title 42 of the United States Code, Section 51.2 of Title 42 of the Code of Federal Regulations, or Section 1386.19 of Title 45 of the Code of Federal Regulations.

(d) "Disability" means a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, a mental illness, as defined in Section 10802(4) of Title 42 of the United States Code, a disability within the meaning of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), as defined in Section 12102(2) of Title 42 of the United States Code, or a disability within the meaning of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), as defined in subdivision (i) or (k) of Section 12926 of the Government Code.

(e) "Facility" or "program" means a public or private facility or program providing services, support, care, or treatment to persons with disabilities, even if only on an as–needed basis or under contractual arrangement. " Facility" or "program" includes, but is not limited to, a hospital, a long–term health care facility, a community living arrangement for people with disabilities, including a group home, a board and care home, an individual residence or apartment of a person with a disability where services are provided, a day program, a juvenile detention facility, a homeless shelter, a jail, or a prison, including all general areas, as well as special, mental health, or forensic units. The term includes any facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code and any facility that is unlicensed but is not exempt from licensure as provided in subdivision (a) of Section 1503.5 of the Health and Safety Code. The term also includes a public or private school or other institution or program providing education, training, habilitation, therapeutic, or residential services to persons with disabilities.

(f) "Legal guardian," "conservator," or "legal representative," means a person appointed by a state court or agency empowered under state law to appoint and review the legal guardian, conservator, or legal representative, as appropriate. With respect to an individual described under paragraph (2) of subdivision (i), this person is one who has the legal authority to consent to health or mental health care or treatment on behalf of the individual. With respect to an individual described under paragraphs (1) or (3) of subdivision (i), this person is one who has the legal authority to make all decisions on behalf of the individual. These terms include the parent of a minor who has legal custody of the minor. These terms do not include a person acting solely as a representative payee, a person acting solely to handle financial matters, an attorney or other person acting on behalf of an individual with a disability solely in individual legal matters, or an official or his or her designee who is responsible for the provision of treatment or services to an individual with a disability.

(g) "Neglect" means a negligent act, or omission to act, that would

constitute neglect as that term is defined in federal statutes and regulations pertaining to the authority of protection and advocacy agencies, including Section 10802(5) of Title 42 of the United States Code, Section 51.2 of Title 42 of the Code of Federal Regulations, or Section 1386.19 of Title 45 of the Code of Federal Regulations. "Neglect" also means a negligent act, or omission to act, that would constitute neglect as that term is defined in subdivision (b) of Section 15610.07 of the Welfare and Institutions Code or Section 11165.2 of the Penal Code.

(h) "Probable cause" to believe that an individual has been subject to abuse or neglect, or is at significant risk of being subjected to abuse or neglect, exists when the protection and advocacy agency determines that it is objectively reasonable for a person to entertain that belief. The individual making a probable cause determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions, or problems that are usually associated with abuse or neglect. Information supporting a probable cause determination may result from monitoring or other activities, including, but not limited to, media reports and newspaper articles.

(i) "Protection and advocacy agency" means the private nonprofit corporation designated by the Governor in this state pursuant to federal law for the protection and advocacy of the rights of persons with disabilities, including the following:

(1) People with developmental disabilities, as authorized under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, contained in Chapter 144 (commencing with Section 15001) of Title 42 of the United States Code.

(2) People with mental illness, as authorized under the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code.

(3) People with disabilities within the meaning of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) as defined in Section 12102(2) of Title 42 of the United States Code, who do not have a developmental disability as defined in Section 15002(8) of Title 42 of the United States Code, people with a mental illness as defined in Section 10802(4) of Title 42 of the United States Code, and who are receiving services under the federal Protection and Advocacy of Individual Rights Act as defined in Section 794e of Title 29 of the United States Code, or people with a disability within the meaning of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), as defined in subdivision (i) or (k) of Section 12926 of the Government Code.

(j) "Reasonable unaccompanied access" means access that permits the protection and advocacy agency, without undue interference, to monitor, inspect, and observe conditions in facilities and programs, to meet and communicate with residents and service recipients privately and confidentially on a regular basis, formally or informally, by telephone, mail, electronic mail, and in person, and to review records privately and confidentially, in a manner that minimizes interference with the activities of the program or service, that respects residents' privacy interests and honors a resident's request to terminate an interview, and that does not jeopardize the physical health or safety of facility or program staff, residents, service recipients, or protection and advocacy agency staff.

(Added by Stats.1991, c. 534 (S.B.1088), § 7. Amended by Stats.2003, c. 878 (S.B.577), § 4.)

§ 4901. Private nonprofit corporation; conformance with requirements of federal law by agency and by state officers and employees; authority of protection and advocacy systems; cooperation with state officers and employees; investigations of reports of adult abuse or neglect

(a) The protection and advocacy agency, for purposes of this division, shall be a private nonprofit corporation and shall meet all of the requirements of federal law applicable to protection and advocacy systems, including, but not limited to, the requirement that it establish a grievance procedure for clients or prospective clients of the system to ensure that people with disabilities have full access to services of the system.

(b) State officers and employees, in taking any action relating to the protection and advocacy agency, shall meet the requirements of federal law applicable to protection and advocacy systems.

(c) The authority of the protection and advocacy agency set forth in this division shall not diminish the authority of the protection and advocacy agency under federal statutes pertaining to the authority of protection and advocacy systems, or under federal rules and regulations adopted in implementation of those statutes.

(d) Nothing in this division shall be construed to supplant the jurisdiction or the responsibilities of adult protective services programs pursuant to Chapter 11 (commencing with Section 15600), or Chapter 13 (commencing with Section 15750), of Part 3 of Division 9.

(e)(1) Nothing in this division shall be construed to supplant the duties or authority of the State Long–Term Care Ombudsman Program pursuant to Chapter 11 (commencing with Section 9700) of Division 8.5.

(2) The protection and advocacy agency shall cooperate with the Office of the State Long–Term Care Ombudsman when appropriate, as provided in Section 9717.

(f)(1) Nothing in this division shall be construed to alter or impact the Elder and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600), or Chapter 13 (commencing with Section 15750), of Part 3 of Division 9, including the confidentiality requirements of Section 15633 and the legal responsibility of the protection and advocacy agency to report elder or dependent adult abuse or neglect as required by paragraph (1) of subdivision (b) of Section 15630.

(2) The adult protective services agency shall retain the responsibility to investigate any report of abuse or neglect in accordance with Chapter 13 (commencing with Section 15750) of Part 3 of Division 9 when the reported abuse or neglect is within the jurisdiction of the adult protective services agency.

(Added by Stats.1991, c. 534 (S.B.1088), § 7. Amended by Stats.2003, c. 878 (S.B.577), § 5.)

§ 4902. Powers and duties

(a) The protection and advocacy agency, in protecting and advocating for the rights of people with disabilities, pursuant to the federal mandate, may do all of the following:

(1) Investigate any incident of abuse or neglect of any person with a disability if the incident is reported to the protection and advocacy agency or if the protection and advocacy agency determines there is probable cause to believe the abuse or neglect occurred. This authority shall include reasonable access to a facility or program and authority to examine all relevant records and interview any facility or program service recipient, employee, or other person who might have knowledge of the alleged abuse or neglect.

(2) Pursue administrative, legal, and other appropriate remedies or approaches to ensure the protection of the rights of people with disabilities.

(3) Provide information and training on, and referral to, programs and services addressing the needs of people with disabilities, including information and training regarding individual rights and the services available from the protection and advocacy agency.

(b) The protection and advocacy agency shall, in addition, have reasonable access to facilities or programs in the state that provide care and treatment to people with disabilities, and access to those persons.

(1) The protection and advocacy agency shall have reasonable unaccompanied access to public or private facilities, programs, and services, and to recipients of services therein, at all times as are necessary to investigate incidents of abuse and neglect in accord with

paragraph (1) of subdivision (a). Access shall be afforded, upon request, to the agency when any of the following has occurred:

(A) An incident is reported or a complaint is made to the agency.

(B) The agency determines there is probable cause to believe that an incident has or may have occurred.

(C) The agency determines that there is or may be imminent danger of serious abuse or neglect of an individual with a disability.

(2) The protection and advocacy agency shall have reasonable unaccompanied access to public and private facilities, programs, and services, and recipients of services therein during normal working hours and visiting hours for other advocacy services. In the case of information and training services, access shall be at times mutually agreeable to the protection and advocacy agency and facility management. This access shall be for the purpose of any of the following:

(A) Providing information and training on, and referral to programs addressing the needs of, individuals with disabilities, and information and training on individual rights and the protection and advocacy services available from the agency, including, but not limited to, the name, address, and telephone number of the protection and advocacy agency.

(B) Monitoring compliance with respect to the rights and safety of residents or service recipients.

(C) Inspecting, viewing, and photographing all areas of the facility or program that are used by residents or service recipients, or that are accessible to them.

(c) If the protection and advocacy agency's access to facilities, programs, service recipients, residents, or records covered by this division is delayed or denied by a facility, program, or service, the facility, program, or service shall promptly provide the agency with a written statement of reasons. In the case of denial of access for alleged lack of authorization, the facility, program, or service shall promptly provide to the agency the name, address, and telephone number of the legal guardian, conservator, or other legal representative of the individual with a disability for whom authorization is required. Access to a facility, program, service recipient, resident, or to records, shall not be delayed or denied without the prompt provision of a written statement of the reasons for the denial.

(d) The protection and advocacy agency may not enter an individual residence or apartment of a client or his or her family without the consent of an adult occupant. In the absence of this consent, the protection and advocacy agency may enter only if it has obtained the legal authority to enforce its access authority pursuant to legal remedies available under this division or applicable federal law.

(e) A care provider, including, but not limited to, any individual, state entity, or other organization that is required to respond to these requests, may charge a reasonable fee to cover the cost of copying records pursuant to this division that may take into account the costs incurred by the care provider in locating, identifying, and making the records available as required pursuant to this division. Charges for copying records that would otherwise be available to the protection and advocacy agency or the person with a disability whose records are requested, under other statutes providing for access to records, may not exceed any rates for obtaining copies of the records specified in the applicable provisions.

(Added by Stats.1991, c. 534 (S.B.1088), § 7. Amended by Stats.2003, c. 878 (S.B.577), § 6.)

§ 4903. Access to information and records; confidentiality of records of agency

(a) The protection and advocacy agency shall have access to the records of any of the following people with disabilities:

(1) Any person who is a client of the agency, or any person who has requested assistance from the agency, if that person or the agent designated by that person, or the legal guardian, conservator, or other legal representative of that person, has authorized the protection and advocacy agency to have access to the records and information. If a person with a disability who is able to authorize the protection and advocacy agency to access his or her records expressly denies this access after being informed by the protection and advocacy agency of his or her right to authorize or deny access, the protection and advocacy agency may not have access to that person's records.

(2) Any person, including any individual who cannot be located, to whom all of the following conditions apply:

(A) The individual, due to his or her mental or physical condition, is unable to authorize the protection and advocacy agency to have access to his or her records.

(B) The individual does not have a legal guardian, conservator, or other legal representative, or the individual's representative is a public entity, including the state or one of its political subdivisions.

(C) The protection and advocacy agency has received a complaint that the individual has been subject to abuse or neglect, or has determined that probable cause exists to believe that the individual has been subject to abuse or neglect.

(3) Any person who is deceased, and for whom the protection and advocacy agency has received a complaint that the individual had been subjected to abuse or neglect, or for whom the agency has determined that probable cause exists to believe that the individual had been subjected to abuse or neglect.

(4) Any person who has a legal guardian, conservator, or other legal representative with respect to whom a complaint has been received by the protection and advocacy agency, or with respect to whom the protection and advocacy agency has determined that probable cause exists to believe that the person has been subjected to abuse or neglect, whenever all of the following conditions exist:

(A) The representative has been contacted by the protection and advocacy agency upon receipt of the representative's name and address.

(B) The protection and advocacy agency has offered assistance to the representatives to resolve the situation.

(C) The representative has failed or refused to act on behalf of the person.

(b) Individual records that shall be available to the protection and advocacy agency under this section shall include, but not be limited to, all of the following information and records related to the investigation, whether written or in another medium, draft or final, including, but not limited to, handwritten notes, electronic files, photographs, videotapes, or audiotapes:

(1) Information and records prepared or received in the course of providing intake, assessment, evaluation, education, training, or other supportive services, including, but not limited to, medical records, financial records, monitoring reports, or other reports, prepared or received by a member of the staff of a facility, program, or service that is providing care, treatment, or services.

(2) Reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, injury, or death occurring at the program, facility, or service while the individual with a disability is under the care of a member of the staff of a program, facility, or service, or by or for a program, facility, or service, that describe any or all of the following:

(A) Abuse, neglect, injury, or death.

(B) The steps taken to investigate the incidents.

(C) Reports and records, including, but not limited to, personnel records prepared or maintained by the facility, program, or service in connection with reports of incidents, subject to the following:

(i) If a state statute specifies procedures with respect to personnel records, the protection and advocacy agency shall follow those procedures.

(ii) Personnel records shall be protected from disclosure in compliance with the fundamental right of privacy established pursuant to Section 1 of Article I of the California Constitution. The custodian of personnel records shall have a right and a duty to resist attempts to allow the unauthorized disclosure of personnel records,

and may not waive the privacy rights that are guaranteed pursuant to Section 1 of Article I of the California Constitution.

(D) Supporting information that was relied upon in creating a report, including, but not limited to, all information and records that document interviews with persons who were interviewed, physical and documentary evidence that was reviewed, or related investigative findings.

(3) Discharge planning records.

(c) Information in the possession of a program, facility, or service that must be available to the agency investigating instances of abuse or neglect pursuant to paragraph (1) of subdivision (a) of Section 4902, whether written or in another medium, draft or final, including, but not limited to, handwritten notes, electronic files, photographs, videotapes, audiotapes, or records, shall include, but not be limited to, all of the following:

(1) Information in reports prepared by individuals and entities performing certification or licensure reviews, or by professional accreditation organizations, as well as related assessments prepared for a program, facility, or service by its staff, contractors, or related entities, subject to any other provision of state law protecting records produced by medical care evaluation or peer review committees.

(2) Information in professional, performance, building, or other safety standards, or demographic and statistical information, relating to the facility.

(d) The authority of the protection and advocacy agency to have access to records does not supersede any prohibition on discovery specified in Sections 1157 and 1157.6 of the Evidence Code, nor does it supersede any prohibition on disclosure subject to the physician–patient privilege or the psychotherapist–patient privilege.

(e)(1) The protection and advocacy agency shall have access to records of individuals described in paragraph (1) of subdivision (a) of Section 4902 and in subdivision (a), and other records that are relevant to conducting an investigation, under the circumstances described in those subdivisions, not later than three business days after the agency makes a written request for the records involved.

(2) The protection and advocacy agency shall have immediate access to the records, not later than 24 hours after the agency makes a request, without consent from another party, in a situation in which treatment, services, supports, or other assistance is provided to an individual with a disability, if the agency determines there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy, or in a case of death of an individual with a disability.

(f) Confidential information kept or obtained by the protection and advocacy agency shall remain confidential and may not be subject to disclosure. This subdivision shall not, however, prevent the protection and advocacy agency from doing any of the following:

(1) Sharing the information with the individual client who is the subject of the record or report or other document, or with his or her legally authorized representative, subject to any limitation on disclosure to recipients of mental health services as provided in subsection (b) of Section 10806 of Title 42 of the United States Code.

(2) Issuing a public report of the results of an investigation that maintains the confidentiality of individual service recipients.

(3) Reporting the results of an investigation to responsible investigative or enforcement agencies should an investigation reveal information concerning the facility, its staff, or employees warranting possible sanctions or corrective action. This information may be reported to agencies that are responsible for facility licensing or accreditation, employee discipline, employee licensing or certification suspension or revocation, or criminal prosecution.

(4) Pursuing alternative remedies, including the initiation of legal action.

(5) Reporting suspected elder or dependent adult abuse pursuant to the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9).

(g) The protection and advocacy agency shall inform and train employees as appropriate regarding the confidentiality of client records.

(Added by Stats.1991, c. 534 (S.B.1088), § 7. Amended by Stats.2003, c. 878 (S.B.577), § 7.)

§ 4904. Immunity from liability

(a) The protection and advocacy agency, its employees, and designated agents, shall not be liable for an injury resulting from an employee's or agent's act or omission where the act or omission was the result of the exercise, in good faith, of the discretion vested in him or her.

(b) The protection and advocacy agency, its employees, and designated agents, shall not be liable for damages awarded under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant.

(c) The protection and advocacy agency, its employees, and designated agents, when participating in filing a complaint or providing information pursuant to this division or participating in a judicial proceeding resulting therefrom shall be presumed to be acting in good faith and unless the presumption is rebutted, shall be immune from any liability, civil or criminal, and shall be immune from any penalty, sanction, or restriction that might be incurred or imposed.

(Added by Stats.1991, c. 534 (S.B.1088), § 7.)

§ 4905. Reprisal or harassment, or directly or indirectly take or threaten to take any actions to prevent reports to agency of abuse, neglect or other violations; attempt to remove from facility or program or to deny rights as retaliation for complaint

(a) No employee or agent of a facility, program, or service shall subject a person with a disability to reprisal or harassment or directly or indirectly take or threaten to take any action that would prevent the person, his or her legally authorized representative, or family member from reporting or otherwise bringing to the attention of the protection and advocacy agency any facts or information relative to suspected abuse, neglect, or other violations of the person's rights.

(b) Any attempt to involuntarily remove from a facility, program, or service, or to deny privileges or rights without good cause to a person with a disability by whom or for whom a complaint has been made to the protection and advocacy agency, within 60 days after the date the complaint is made or within 60 days after the conclusion of any proceeding resulting from the complaint, shall raise a presumption that the action was taken in retaliation for the filing of the complaint.

(Added by Stats.1991, c. 534 (S.B.1088), § 7. Amended by Stats.2003, c. 878 (S.B.577), § 8.)

§ 4906. Prohibition against use of force to obtain access to information

(a) The protection and advocacy agency may not obtain access through the use of physical force to facilities, programs, service recipients, residents, or records required by the division if this access is delayed or denied.

(b) Notwithstanding subdivision (a), nothing in this division is intended to preclude the protection and advocacy agency from pursuing appropriate legal remedies to enforce its access authority under this division or applicable federal law.

(Added by Stats.2003, c. 878 (S.B.577), § 9.)

WELFARE AND INSTITUTIONS CODE — COMMUNITY MENTAL HEALTH SERVICES

Division 5 COMMUNITY MENTAL HEALTH SERVICES

Part 1 THE LANTERMAN–PETRIS–SHORT ACT

Chapter 1 GENERAL PROVISIONS

§ 5000. Short title

This part shall be known and may be cited as the Lanterman–Petris–Short Act.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5001. Legislative intent

The provisions of this part shall be construed to promote the legislative intent as follows:

(a) To end the inappropriate, indefinite, and involuntary commitment of mentally disordered persons, developmentally disabled persons, and persons impaired by chronic alcoholism, and to eliminate legal disabilities;

(b) To provide prompt evaluation and treatment of persons with serious mental disorders or impaired by chronic alcoholism;

(c) To guarantee and protect public safety;

(d) To safeguard individual rights through judicial review;

(e) To provide individualized treatment, supervision, and placement services by a conservatorship program for gravely disabled persons;

(f) To encourage the full use of all existing agencies, professional personnel and public funds to accomplish these objectives and to prevent duplication of services and unnecessary expenditures;

(g) To protect mentally disordered persons and developmentally disabled persons from criminal acts.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1977, c. 1167, p. 3824, § 1.)

§ 5002. Persons who may not be judicially committed; receipt of services

Mentally disordered persons and persons impaired by chronic alcoholism may no longer be judicially committed.

Mentally disordered persons shall receive services pursuant to this part. Persons impaired by chronic alcoholism may receive services pursuant to this part if they elect to do so pursuant to Article 3 (commencing with Section 5225) of Chapter 2 of this part.

Epileptics may no longer be judicially committed.

This part shall not be construed to repeal or modify laws relating to the commitment of mentally disordered sex offenders, mentally retarded persons, and mentally disordered criminal offenders, except as specifically provided in Penal Code Section 4011.6, or as specifically provided in other statutes.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1970, c. 516, p. 1003, § 4; Stats.1971, c. 1459, p. 2875, § 1.)

§ 5003. Voluntary applications for mental health services

Nothing in this part shall be construed in any way as limiting the right of any person to make voluntary application at any time to any public or private agency or practitioner for mental health services, either by direct application in person, or by referral from any other public or private agency or practitioner.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5004. Protection from criminal acts

Mentally disordered persons and developmentally disabled persons shall receive protection from criminal acts equal to that provided any other resident in this state.

(Added by Stats.1977, c. 1167, p. 3825, § 2.)

§ 5004.5. Reports of crime; complaints

Notwithstanding any other provision of law, a legal guardian, conservator, or any other person who reasonably believes a mentally disordered or developmentally disabled person is the victim of a crime may file a report with an appropriate law enforcement agency. The report shall specify the nature of the alleged offense and any pertinent evidence. Notwithstanding any other provision of law, the information in such report shall not be deemed confidential in any manner. No person shall incur any civil or criminal liability as a result of making any report authorized by this section unless it can be shown that a false report was made and the person knew or should have known that the report was false.

Where the district attorney of the county in which the alleged offense occurred finds, based upon the evidence contained in the report and any other evidence obtained through regular investigatory procedures, that a reasonable probability exists that a crime or public offense has been committed and that the mentally disordered or developmentally disabled person is the victim, the district attorney may file a complaint verified on information and belief.

The filing of a report by a legal guardian, conservator, or any other person pursuant to this section shall not constitute evidence that a crime or public offense has been committed and shall not be considered in any manner by the trier of fact.

(Added by Stats.1977, c. 1167, p. 3825, § 3.)

§ 5005. Rights of person complained against

Unless specifically stated, a person complained against in any petition or proceeding initiated by virtue of the provisions of this part shall not forfeit any legal right or suffer legal disability by reason of the provisions of this part.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5006. Prayer treatment

The provisions of this part shall not be construed to deny treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or denomination for any person detained for evaluation or treatment who desires such treatment, or to a minor if his parent, guardian, or conservator desires such treatment.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5007. Prospective application

Unless otherwise indicated, the provisions of this part shall not be construed to apply retroactively to terminate court commitments of mentally ill persons or inebriates under preexisting law.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5008. Definitions

Unless the context otherwise requires, the following definitions shall govern the construction of this part:

(a) "Evaluation" consists of multidisciplinary professional analyses of a person's medical, psychological, educational, social, financial, and legal conditions as may appear to constitute a problem. Persons providing evaluation services shall be properly qualified professionals and may be full–time employees of an agency providing evaluation services or may be part–time employees or may be employed on a contractual basis.

(b) "Court–ordered evaluation" means an evaluation ordered by a superior court pursuant to Article 2 (commencing with Section 5200) or by a court pursuant to Article 3 (commencing with Section 5225) of Chapter 2.

(c) "Intensive treatment" consists of such hospital and other services as may be indicated. Intensive treatment shall be provided by properly qualified professionals and carried out in facilities qualifying for reimbursement under the California Medical Assistance Program (Medi–Cal) set forth in Chapter 7 (commencing with Section 14000) of Part 3 of Division 9, or under Title XVIII of the federal Social Security Act and regulations thereunder. Intensive treatment may be provided in hospitals of the United States government by properly qualified professionals. Nothing in this part shall be construed to prohibit an intensive treatment facility from also providing 72–hour treatment and evaluation.

(d) "Referral" is referral of persons by each agency or facility providing intensive treatment or evaluation services to other agencies or individuals. The purpose of referral shall be to provide for continuity of care, and may include, but need not be limited to, informing the person of available services, making appointments on the person's behalf, discussing the person's problem with the agency or individual to which the person has been referred, appraising the outcome of referrals, and arranging for personal escort and transportation when necessary. Referral shall be considered complete when the agency or individual to whom the person has been referred accepts responsibility for providing the necessary services. All persons shall be advised of available precare services which prevent initial recourse to hospital treatment or aftercare services which support adjustment to community living following hospital treatment. These services may be provided through county welfare departments, State Department of Mental Health, Short–Doyle programs or other local agencies.

Each agency or facility providing evaluation services shall maintain a current and comprehensive file of all community services, both public and private. These files shall contain current agreements with agencies or individuals accepting referrals, as well as appraisals of the results of past referrals.

(e) "Crisis intervention" consists of an interview or series of interviews within a brief period of time, conducted by qualified professionals, and designed to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the person or the family. The interview or interviews may be conducted in the home of the person or family, or on an inpatient or outpatient basis with such therapy, or other services, as may be appropriate. Crisis intervention may, as appropriate, include suicide prevention, psychiatric, welfare, psychological, legal, or other social services.

(f) "Prepetition screening" is a screening of all petitions for court–ordered evaluation as provided in Article 2 (commencing with Section 5200) of Chapter 2, consisting of a professional review of all petitions; an interview with the petitioner and, whenever possible, the person alleged, as a result of mental disorder, to be a danger to others, or to himself or herself, or to be gravely disabled, to assess the problem and explain the petition; when indicated, efforts to persuade the person to receive, on a voluntary basis, comprehensive evaluation, crisis intervention, referral, and other services specified in this part.

(g) "Conservatorship investigation" means investigation by an agency appointed or designated by the governing body of cases in which conservatorship is recommended pursuant to Chapter 3 (commencing with Section 5350).

(h) (1) For purposes of Article 1 (commencing with Section 5150), Article 2 (commencing with Section 5200), and Article 4 (commencing with Section 5250) of Chapter 2, and for the purposes of Chapter 3 (commencing with Section 5350), "gravely disabled" means either of the following:

(A) A condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter.

(B) A condition in which a person, has been found mentally incompetent under Section 1370 of the Penal Code and all of the following facts exist:

(i) The indictment or information pending against the defendant at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well–being of another person.

(ii) The indictment or information has not been dismissed.

(iii) As a result of mental disorder, the person is unable to understand the nature and purpose of the proceedings taken against him or her and to assist counsel in the conduct of his or her defense in a rational manner.

(2) For purposes of Article 3 (commencing with Section 5225) and Article 4 (commencing with Section 5250), of Chapter 2, and for the purposes of Chapter 3 (commencing with Section 5350), "gravely disabled" means a condition in which a person, as a result of impairment by chronic alcoholism, is unable to provide for his or her basic personal needs for food, clothing, or shelter.

(3) The term "gravely disabled" does not include mentally retarded persons by reason of being mentally retarded alone.

(i) "Peace officer" means a duly sworn peace officer as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code who has completed the basic training course established by the Commission on Peace Officer Standards and Training, or any parole officer or probation officer specified in Section 830.5 of the Penal Code when acting in relation to cases for which he or she has a legally mandated responsibility.

(j) "Postcertification treatment" means an additional period of treatment pursuant to Article 6 (commencing with Section 5300) of Chapter 2.

(k) "Court," unless otherwise specified, means a court of record.

(*l*) "Antipsychotic medication" means any medication customarily prescribed for the treatment of symptoms of psychoses and other severe mental and emotional disorders.

(m) "Emergency" means a situation in which action to impose treatment over the person's objection is immediately necessary for the preservation of life or the prevention of serious bodily harm to the patient or others, and it is impracticable to first gain consent. It is not necessary for harm to take place or become unavoidable prior to treatment.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2640, § 14, operative July 1, 1969; Stats.1969, c. 722, p. 1419, § 3, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1970, c. 516, p. 1003, § 5; Stats.1971, c. 1593, p. 3335, § 366, operative July 1, 1973; Stats.1974, c. 1511, p. 3321, § 12, eff. Sept. 27, 1974; Stats.1977, c. 1252, p. 4564, § 551, operative July 1, 1978; Stats.1978, c. 429, p. 1450, § 202, eff. July 17, 1978, operative July 1, 1978; Stats.1978, c. 1294, p. 4241, § 1; Stats.1980, c. 77, p. 194, § 1; Stats.1980, c. 1215, p. 4123, § 2; Stats.1980, c. 1340, p. 4740, § 38.5, eff. Sept. 30, 1980; Stats.1988, c. 1202, § 1; Stats.1990, c. 216 (S.B.2510), § 124; Stats.1991, c. 681 (S.B.665), § 1.)

§ 5008.1. Judicially committed; defined

As used in this division and in Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 6 (commencing with Section 6000), Division 7 (commencing with Section 7100), and Division 8 (commencing with Section 8000), the term "judicially committed" means all of the following:

(a) Persons who are mentally disordered sex offenders placed in a state hospital or institutional unit for observation or committed to the State Department of Mental Health pursuant to Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6.

(b) Developmentally disabled persons who are admitted to a state hospital upon application or who are committed to the State Department of Developmental Services by court order pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6.

(c) Persons committed to the State Department of Mental Health or a state hospital pursuant to the Penal Code.

(Added by Stats.1969, c. 722, p. 1421, § 4, eff. Aug. 8, 1969, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3337, § 367, opera-

tive July 1, 1973; Stats.1977, c. 1252, p. 4566, § 552, operative July 1, 1978; Stats.1978, c. 429, p. 1451, § 203, eff. July 17, 1978, operative July 1, 1978; Stats.1979, c. 373, p. 1393, § 359.)

§ 5008.2. Applying definition of mental disorder; consideration of historical course of disorder

(a) When applying the definition of mental disorder for the purposes of Articles 2 (commencing with Section 5200), 4 (commencing with Section 5250), and 5 (commencing with Section 5275) of Chapter 2 and Chapter 3 (commencing with Section 5350), the historical course of the person's mental disorder, as determined by available relevant information about the course of the person's mental disorder, shall be considered when it has a direct bearing on the determination of whether the person is a danger to others, or to himself or herself, or is gravely disabled, as a result of a mental disorder. The historical course shall include, but is not limited to, evidence presented by persons who have provided, or are providing, mental health or related support services to the patient, the patient's medical records as presented to the court, including psychiatric records, or evidence voluntarily presented by family members, the patient, or any other person designated by the patient. Facilities shall make every reasonable effort to make information provided by the patient's family available to the court. The hearing officer, court, or jury shall exclude from consideration evidence it determines to be irrelevant because of remoteness of time or dissimilarity of circumstances.

(b) This section shall not be applied to limit the application of Section 5328 or to limit existing rights of a patient to respond to evidence presented to the court.

(Added by Stats.1986, c. 872, § 1. Amended by Stats.2001, c. 506 (A.B.1424), § 5.)

§ 5009. Choice of physician

Persons receiving evaluation or treatment under this part shall be given a choice of physician or other professional person providing such services, in accordance with the policies of each agency providing services, and within the limits of available staff in the agency.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5010. Agency administering federal Developmental Disabilities Act; access to records

The agency established in this state to fulfill the requirements and assurances of Section 142 of the federal Developmental Disabilities Act of 1984 for a system to protect and advocate the rights of persons with developmental disabilities, as that term is defined by Section 102(7) of the federal act, shall have access to the records of a person with developmental disabilities who resides in a facility for persons with developmental disabilities when both of the following conditions apply:

(1) The agency has received a complaint from or on behalf of the person and the person consents to the disclosure of the records to the extent of his or her capabilities.

(2) The person does not have a parent, guardian or conservator, or the state or the designee of the state is the person's guardian or conservator.

(Added by Stats.1985, c. 1121, § 2.)

§ 5012. Determining eligibility for payment or reimbursement for mental health or other health care services; persons taken into custody under this part

The fact that a person has been taken into custody under this part may not be used in the determination of that person's eligibility for payment or reimbursement for mental health or other health care services for which he or she has applied or received under the Medi–Cal program, any health care service plan licensed under the Knox–Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code), or any insurer providing health coverage doing business in the state.

(Added by Stats.2001, c. 506 (A.B.1424), § 6.)

§ 5020.1. Mentally ill minor; release from state hospital; aftercare plan for educational and training needs

A mentally ill minor, between the ages of 3 and 18, upon being considered for release from a state hospital shall have an aftercare plan developed. Such plan shall include educational or training needs, provided these are necessary for the patient's well–being.

(Added by Stats.1973, c. 1161, p. 2418, § 2.)

§ 5110. Proceedings in superior court; costs

Whenever a proceeding is held in a superior court under Article 5 (commencing with Section 5275) or Article 6 (commencing with Section 5300) of this chapter or Chapter 3 (commencing with Section 5350) of this part involving a person who has been placed in a facility located outside the county of residence of the person, the provisions of this section shall apply. The appropriate financial officer or other designated official of the county in which the proceeding is held shall make out a statement of all of the costs incurred by the county for the investigation, preparation, and conduct of the proceedings, and the costs of appeal, if any. The statement shall be certified by a judge of the superior court of the county. The statement shall then be sent to the county of residence of the person, which shall reimburse the county providing the services. If it is not possible to determine the actual county of residence of the person, the statement shall be sent to the county in which the person was originally detained, which shall reimburse the county providing the services.

(Added by Stats.1968, c. 1374, p. 2643, § 15.5, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1422, § 5, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1970, c. 1627, p. 3440, § 5; Stats.2002, c. 221 (S.B.1019), § 208.)

§ 5111. Compensation of appointed counsel

Any county without a public defender is authorized to compensate the attorneys appointed for persons entitled to be represented by counsel in proceedings under this part.

(Added by Stats.1970, c. 1627, p. 3441, § 6.)

§ 5113. Exemptions from liability

Except as provided in Sections 5154, 5173, 5259.3, 5267, and 5306, the facility providing treatment pursuant to Article 1 (commencing with Section 5150), Article 1.5 (commencing with Section 5170), Article 4 (commencing with Section 5250), Article 4.5 (commencing with Section 5260) or Article 6 (commencing with Section 5300), the superintendent of the facility, the professional person in charge of the facility and his or her designee, or the peace officer responsible for the detainment of the person shall not be civilly or criminally liable for any action by a person released at or before the end of the period for which he or she was admitted pursuant to the provisions of the appropriate article.

(Added by Stats.1970, c. 1627, p. 3441, § 7. Amended by Stats.1985, c. 1288, § 1, eff. Sept. 30, 1985.)

§ 5114. Proceedings by district attorney or county counsel

At any judicial proceeding under the provisions of this division, allegations that the person is a danger to others, or to himself, or gravely disabled as a result of mental disorder or impairment by chronic alcoholism, shall be presented by the district attorney for the county, unless the board of supervisors, by ordinance or resolution, delegates such duty to the county counsel.

(Added by Stats.1970, c. 1627, p. 3441, § 8.)

§ 5115. Legislative intent

The Legislature hereby finds and declares:

(a) It is the policy of this state, as declared and established in this section and in the Lanterman Developmental Disabilities Services Act, Division 4.5 (commencing with Section 4500), that mentally and physically handicapped persons are entitled to live in normal residential surroundings and should not be excluded therefrom because of their disability.

(b) In order to achieve uniform statewide implementation of the

policies of this section and those of the Lanterman Developmental Disabilities Services Act, it is necessary to establish the statewide policy that the use of property for the care of six or fewer mentally disordered or otherwise handicapped persons is a residential use of such property for the purposes of zoning.

(Added by Stats.1970, c. 1219, p. 2136, § 1. Amended by Stats.1978, c. 891, p. 2803, § 4, eff. Sept. 19, 1978.)

§ 5116. Property used for care of six or fewer handicapped persons or dependent or neglected children as residential use for zoning purposes

Pursuant to the policy stated in Section 5115, a state–authorized, certified, or licensed family care home, foster home, or group home serving six or fewer mentally disordered or otherwise handicapped persons or dependent and neglected children, shall be considered a residential use of property for the purposes of zoning if such homes provide care on a 24–hour–a–day basis.

Such homes shall be a permitted use in all residential zones, including, but not limited to, residential zones for single–family dwellings.

(Added by Stats.1970, c. 1219, p. 2136, § 2. Amended by Stats.1971, c. 1163, p. 2223, § 1; Stats.1972, c. 1127, p. 2167, § 1; Stats.1978, c. 891, p. 2803, § 5, eff. Sept. 19, 1978.)

§ 5117. Plan for consolidation of facilities standard setting, licensure and ratesetting functions of departments

In order to further facilitate achieving the purposes of this act and the Lanterman Mental Retardation Act of 1969, [1] it is desirable that there be a consolidation of the facilities standard setting, licensure and ratesetting functions of the various state departments under the jurisdiction of the Health and Welfare Agency.

(Added by Stats.1970, c. 1219, p. 2137, § 3. Amended by Stats.1979, c. 373, p. 1393, § 360.)

[1]See, Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code § 4500 et seq.

§ 5118. Hearings; time and place; conduct; public; validation

For the purpose of conducting hearings under this part, the court in and for the county where the petition is filed may be convened at any time and place within or outside the county suitable to the mental and physical health of the patient, and receive evidence both oral and written, and render decisions, except that the time and place for hearing shall not be different from the time and place for the trial of civil actions for such court if any party to the proceeding, prior to the hearing, objects to the different time or place.

Hearings conducted at any state hospital or any mental health facility designated by any county as a treatment facility under this part or any facility referred to in Section 5358 or Division 7 (commencing with Section 7100), within or outside the county, shall be deemed to be hearings held in a place for the trial of civil actions and in a regular courtroom of the court.

Notwithstanding any other provisions of this section, any party to the proceeding may demand that the hearing be public, and be held in a place suitable for attendance by the public.

Notwithstanding any other provisions of law, any hearing under this part which was held before enactment of this section but which would have been in accordance with this section had it been effective is deemed to be valid for all purposes.

As used in this section, a "hearing under this part" includes conservatorship and other hearings held pursuant to Chapter 3 (commencing with Section 5350) of this part.

(Added by Stats.1971, c. 1162, p. 2220, § 1. Amended by Stats.1979, c. 373, p. 1393, § 361.)

§ 5119. Employment of state employees in county mental health program; retention of benefits; retraining programs

On and after July 1, 1972, when a person who is an employee of the State Department of Mental Health at the time of employment by a county in a county mental health program or on and after July 1, 1972, when a person has been an employee of the State Department of Mental Health within the 12–month period prior to his employment by a county in a county mental health program, the board of supervisors may, to the extent feasible, allow such person to retain as a county employee, those employee benefits to which he was entitled or had accumulated as an employee of the State Department of Mental Health or provide such employee with comparable benefits provided for other county employees whose service as county employees is equal to the state service of the former employee of the State Department of Mental Health. Such benefits include, but are not limited to, retirement benefits, seniority rights under civil service, accumulated vacation and sick leave.

The county may on and after July 1, 1972, establish retraining programs for the State Department of Mental Health employees transferring to county mental health programs provided such programs are financed entirely with state and federal funds made available for that purpose.

For the purpose of this section "employee of the Department of Mental Health" means an employee of such department who performs functions which, prior to July 1, 1973, were vested in the Department of Mental Hygiene.

(Added by Stats.1972, c. 1228, p. 2369, § 6, eff. Dec. 11, 1972. Amended by Stats.1973, c. 142, p. 416, § 68, eff. June 30, 1973, operative July 1, 1973; Stats.1977, c. 1252, p. 4567, § 553, operative July 1, 1978.)

§ 5120. State policy; care and treatment of patients in local community; discrimination in zoning; prohibition

It is the policy of this state as declared and established in this act and in the Lanterman–Petris–Short Act that the care and treatment of mental patients be provided in the local community. In order to achieve uniform statewide implementation of the policies of this act, it is necessary to establish the statewide policy that, notwithstanding any other provision of law, no city or county shall discriminate in the enactment, enforcement, or administration of any zoning laws, ordinances, or rules and regulations between the use of property for the treatment of general hospital or nursing home patients and the use of property for the psychiatric care and treatment of patients, both inpatient and outpatient.

Health facilities for inpatient and outpatient psychiatric care and treatment shall be permitted in any area zoned for hospitals or nursing homes, or in which hospitals and nursing homes are permitted by conditional use permit.

(Added by Stats.1971, c. 815, p. 1573, § 1. Amended by Stats.1972, c. 559, p. 961, § 1, eff. Aug. 4, 1972.)

Chapter 2 INVOLUNTARY TREATMENT

Article 1 DETENTION OF MENTALLY DISORDERED PERSONS FOR EVALUATION AND TREATMENT

§ 5150. Dangerous or gravely disabled person; taking into custody; application; basis of probable cause; liability

When any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, designated members of a mobile crisis team provided by Section 5651.7, or other professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72–hour treatment and evaluation.

Such facility shall require an application in writing stating the circumstances under which the person's condition was called to the attention of the officer, member of the attending staff, or professional person, and stating that the officer, member of the attending staff, or professional person has probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled. If the probable cause is based on the statement of a person other than the officer, member of the attending staff, or professional person, such person shall be liable in a civil action for intentionally giving a statement which he or she knows to be false.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2643, § 16, operative July 1, 1969; Stats.1970, c. 516, p. 1005, § 7; Stats.1971, c. 1593, p. 3337, § 368, operative July 1, 1973; Stats.1975, c. 960, p. 2243, § 2; Stats.1977, c. 1252, p. 4567, § 554, operative July 1, 1978; Stats.1980, c. 968, p. 3064, § 1.)

§ 5150.05. Determination of probable cause to take person into custody or cause person to be taken into custody

(a) When determining if probable cause exists to take a person into custody, or cause a person to be taken into custody, pursuant to Section 5150, any person who is authorized to take that person, or cause that person to be taken, into custody pursuant to that section shall consider available relevant information about the historical course of the person's mental disorder if the authorized person determines that the information has a reasonable bearing on the determination as to whether the person is a danger to others, or to himself or herself, or is gravely disabled as a result of the mental disorder.

(b) For purposes of this section, "information about the historical course of the person's mental disorder" includes evidence presented by the person who has provided or is providing mental health or related support services to the person subject to a determination described in subdivision (a), evidence presented by one or more members of the family of that person, and evidence presented by the person subject to a determination described in subdivision (a) or anyone designated by that person.

(c) If the probable cause in subdivision (a) is based on the statement of a person other than the one authorized to take the person into custody pursuant to Section 5150, a member of the attending staff, or a professional person, the person making the statement shall be liable in a civil action for intentionally giving any statement that he or she knows to be false.

(d) This section shall not be applied to limit the application of Section 5328.

(Added by Stats.2001, c. 506 (A.B.1424), § 7.)

§ 5150.1. Peace officer transporting person to designated facilities; prohibited activities by employees of facilities

No peace officer seeking to transport, or having transported, a person to a designated facility for assessment under Section 5150, shall be instructed by mental health personnel to take the person to, or keep the person at, a jail solely because of the unavailability of an acute bed, nor shall the peace officer be forbidden to transport the person directly to the designated facility. No mental health employee from any county, state, city, or any private agency providing Short–Doyle psychiatric emergency services shall interfere with a peace officer performing duties under Section 5150 by preventing the peace officer from entering a designated facility with the person to be assessed, nor shall any employee of such an agency require the peace officer to remove the person without assessment as a condition of allowing the peace officer to depart.

"Peace officer" for the purposes of this section also means a jailer seeking to transport or transporting a person in custody to a designated facility for assessment consistent with Section 4011.6 or 4011.8 of the Penal Code and Section 5150.

(Added by Stats.1985, c. 1286, § 6.2, eff. Sept. 30, 1985.)

§ 5150.2. Detaining peace officer; documentation; disposition procedures and guidelines for persons not admitted

In each county whenever a peace officer has transported a person to a designated facility for assessment under Section 5150, that officer shall be detained no longer than the time necessary to complete documentation of the factual basis of the detention under Section 5150 and a safe and orderly transfer of physical custody of the person. The documentation shall include detailed information regarding the factual circumstances and observations constituting probable cause for the peace officer to believe that the individual required psychiatric evaluation under the standards of Section 5105.

Each county shall establish disposition procedures and guidelines with local law enforcement agencies as necessary to relate to persons not admitted for evaluation and treatment and who decline alternative mental health services and to relate to the safe and orderly transfer of physical custody of persons under Section 5150, including those who have a criminal detention pending.

(Added by Stats.1985, c. 1286, § 6.4, eff. Sept. 30, 1985.)

§ 5150.3. Alternative services; persons not admitted to facility

Whenever any person presented for evaluation at a facility designated under Section 5150 is found to be in need of mental health services, but is not admitted to the facility, all available alternative services provided for pursuant to Section 5151 shall be offered as determined by the county mental health director.

(Added by Stats.1985, c. 1286, § 6.6, eff. Sept. 30, 1985.)

§ 5150.4. Assessment

"Assessment" for the purposes of this article, means the determination of whether a person shall be evaluated and treated pursuant to Section 5150.

(Added by Stats.1985, c. 1286, § 6.7, eff. Sept. 30, 1985.)

§ 5151. Detention for evaluation; individual assessments prior to admission to determine appropriateness of detention; services provided

If the facility for 72–hour treatment and evaluation admits the person, it may detain him or her for evaluation and treatment for a period not to exceed 72 hours. Saturdays, Sundays, and holidays may be excluded from the 72–hour period if the Department of Mental Health certifies for each facility that evaluation and treatment services cannot reasonably be made available on those days. The certification by the department is subject to renewal every two years. The department shall adopt regulations defining criteria for determining whether a facility can reasonably be expected to make evaluation and treatment services available on Saturdays, Sundays, and holidays.

Prior to admitting a person to the facility for 72–hour treatment and evaluation pursuant to Section 5150, the professional person in charge of the facility or his or her designee shall assess the individual in person to determine the appropriateness of the involuntary detention.

If in the judgment of the professional person in charge of the facility providing evaluation and treatment, or his or her designee, the person can be properly served without being detained, he or she shall be provided evaluation, crisis intervention, or other inpatient or outpatient services on a voluntary basis.

Nothing in this section shall be interpreted to prevent a peace officer from delivering individuals to a designated facility for assessment under Section 5150. Furthermore, the preadmission assessment requirement of this section shall not be interpreted to require peace officers to perform any additional duties other than those specified in Sections 5150.1 and 5150.2.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1978, c. 1294, p. 4243, § 2; Stats.1986, c. 323, § 1.)

§ 5152. Evaluation; treatment and care; written and oral information on effects of medication; release or other disposition

(a) Each person admitted to a facility for 72–hour treatment and evaluation under the provisions of this article shall receive an evaluation as soon as possible after he or she is admitted and shall receive whatever treatment and care his or her condition requires for the full period that he or she is held. The person shall be released before 72 hours have elapsed only if the psychiatrist directly responsible for the person's treatment believes, as a result of the psychiatrist's personal observations, that the person no longer requires evaluation or treatment. However, in those situations in which both a psychiatrist and psychologist have personally evaluated or examined a person who is placed under a 72–hour hold and there is a collaborative treatment relationship between the psychiatrist and psychologist, either the psychiatrist or psychologist may authorize the release of the person from the hold, but only after they have consulted with one another. In the event of a clinical or professional disagreement regarding the early release of a person who has been placed under a 72–hour hold, the hold shall be maintained unless the facility's medical director overrules the decision of the psychiatrist or psychologist opposing the release. Both the psychiatrist and psychologist shall enter their findings, concerns, or objections into the person's medical record. If any other professional person who is authorized to release the person believes the person should be released before 72 hours have elapsed, and the psychiatrist directly responsible for the person's treatment objects, the matter shall be referred to the medical director of the facility for the final decision. However, if the medical director is not a psychiatrist, he or she shall appoint a designee who is a psychiatrist. If the matter is referred, the person shall be released before 72 hours have elapsed only if the psychiatrist making the final decision believes, as a result of the psychiatrist's personal observations, that the person no longer requires evaluation or treatment.

(b) Any person who has been detained for evaluation and treatment shall be released, referred for further care and treatment on a voluntary basis, or certified for intensive treatment, or a conservator or temporary conservator shall be appointed pursuant to this part as required.

(c) A person designated by the mental health facility shall give to any person who has been detained at that facility for evaluation and treatment and who is receiving medication as a result of his or her mental illness, as soon as possible after detention, written and oral information about the probable effects and possible side effects of the medication. The State Department of Mental Health shall develop and promulgate written materials on the effects of medications, for use by county mental health programs as disseminated or as modified by the county mental health program, addressing the probable effects and the possible side effects of the medication. The following information shall be given orally to the patient:

(1) The nature of the mental illness, or behavior, that is the reason the medication is being given or recommended.

(2) The likelihood of improving or not improving without the medication.

(3) Reasonable alternative treatments available.

(4) The name and type, frequency, amount, and method of dispensing the medication, and the probable length of time the medication will be taken.

The fact that the information has or has not been given shall be indicated in the patient's chart. If the information has not been given, the designated person shall document in the patient's chart the justification for not providing the information. A failure to give information about the probable effects and possible side effects of the medication shall not constitute new grounds for release.

(d) The amendments to this section made by Assembly Bill 348 of the 2003–04 Regular Session[1] shall not be construed to revise or expand the scope of practice of psychologists, as defined in Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2644, § 18, operative July 1, 1969; Stats.1970, c. 1627, p. 3441, § 9; Stats.1985, c. 1288, § 2, eff. Sept. 30, 1985; Stats.1986, c. 872, § 1.5; Stats.2003, c. 94 (A.B.348), § 1.)

[1]See Stats.2003, c. 94 (A.B.348), § 1.

§ 5152.1. Notification to county mental health director, peace officer, or person designated by law enforcement agency employing peace officer; conditions

The professional person in charge of the facility providing 72–hour evaluation and treatment, or his or her designee, shall notify the county mental health director or the director's designee and the peace officer who makes the written application pursuant to Section 5150 or a person who is designated by the law enforcement agency that employs the peace officer, when the person has been released after 72–hour detention, when the person is not detained, or when the person is released before the full period of allowable 72–hour detention if all of the following conditions apply:

(a) The peace officer requests such notification at the time he or she makes the application and the peace officer certifies at that time in writing that the person has been referred to the facility under circumstances which, based upon an allegation of facts regarding actions witnessed by the officer or another person, would support the filing of a criminal complaint.

(b) The notice is limited to the person's name, address, date of admission for 72–hour evaluation and treatment, and date of release.

If a police officer, law enforcement agency, or designee of the law enforcement agency, possesses any record of information obtained pursuant to the notification requirements of this section, the officer, agency, or designee shall destroy that record two years after receipt of notification.

(Added by Stats.1975, c. 960, p. 2643, § 3. Amended by Stats.1983, c. 755, § 1.)

§ 5152.2. Methods for prompt notification to peace officers

Each law enforcement agency within a county shall arrange with the county mental health director a method for giving prompt notification to peace officers pursuant to Section 5152.1.

(Added by Stats.1975, c. 960, p. 2643, § 4.)

§ 5153. Plain clothes officers; vehicles

Whenever possible, officers charged with apprehension of persons pursuant to this article shall dress in plain clothes and travel in unmarked vehicles.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1422, § 6, eff. Aug. 8, 1969, operative July 1, 1969.)

§ 5154. Exemption from liability

(a) Notwithstanding Section 5113, if the provisions of Section 5152 have been met, the professional person in charge of the facility providing 72–hour treatment and evaluation, his or her designee, the medical director of the facility or his or her designee described in Section 5152, the psychiatrist directly responsible for the person's treatment, or the psychologist shall not be held civilly or criminally liable for any action by a person released before the end of 72 hours pursuant to this article.

(b) The professional person in charge of the facility providing 72–hour treatment and evaluation, his or her designee, the medical director of the facility or his or her designee described in Section 5152, the psychiatrist directly responsible for the person's treatment, or the psychologist shall not be held civilly or criminally liable for any action by a person released at the end of the 72 hours pursuant to this article.

(c) The peace officer responsible for the detainment of the person

shall not be civilly or criminally liable for any action by a person released at or before the end of the 72 hours pursuant to this article.

(d) The amendments to this section made by Assembly Bill 348 of the 2003–04 Regular Session[1] shall not be construed to revise or expand the scope of practice of psychologists, as defined in Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2644, § 19, operative July 1, 1969; Stats.1985, c. 1288, § 3, eff. Sept. 30, 1985; Stats.2003, c. 94 (A.B.348), § 2.)

[1]See Stats.2003, c. 94 (A.B.348), § 2.

§ 5155. Supplementary licenses; issuance by local entities

Nothing in this part shall be construed as granting authority to local entities to issue licenses supplementary to existing state and local licensing laws.

(Added by Stats.1968, c. 1374, p. 2645, § 20, operative July 1, 1969.)

§ 5156. Personal property of person taken into custody; report; responsible relative defined

At the time a person is taken into custody for evaluation, or within a reasonable time thereafter, unless a responsible relative or the guardian or conservator of the person is in possession of the person's personal property, the person taking him into custody shall take reasonable precautions to preserve and safeguard the personal property in the possession of or on the premises occupied by the person. The person taking him into custody shall then furnish to the court a report generally describing the person's property so preserved and safeguarded and its disposition, in substantially the form set forth in Section 5211; except that if a responsible relative or the guardian or conservator of the person is in possession of the person's property, the report shall include only the name of the relative or guardian or conservator and the location of the property, whereupon responsibility of the person taking him into custody for such property shall terminate.

As used in this section, "responsible relative" includes the spouse, parent, adult child, or adult brother or sister of the person, except that it does not include the person who applied for the petition under this article.

(Added by Stats.1969, c. 722, p. 1422, § 6.1, eff. Aug. 8, 1969, operative July 1, 1969.)

§ 5157. Information to be given person taken into custody; contents; record of advisement

(a) Each person, at the time he or she is first taken into custody under provisions of Section 5150, shall be provided, by the person who takes such other person into custody, the following information orally. The information shall be in substantially the following form:

My name is _____.
I am a _____
(peace officer, mental health professional)

with _____.
(name of agency)

You are not under criminal arrest, but I am taking you for examination by mental health professionals at _____
_____.
(name of facility)
You will be told your rights by the mental health staff.

If taken into custody at his or her residence, the person shall also be told the following information in substantially the following form:

You may bring a few personal items with you which I will have to approve. You can make a phone call and/or leave a note to tell your friends and/or family where you have been taken.

(b) The designated facility shall keep, for each patient evaluated, a record of the advisement given pursuant to subdivision (a) which shall include:

(1) Name of person detained for evaluation.

(2) Name and position of peace officer or mental health professional taking person into custody.

(3) Date.

(4) Whether advisement was completed.

(5) If not given or completed, the mental health professional at the facility shall either provide the information specified in subdivision (a), or include a statement of good cause, as defined by regulations of the State Department of Mental Health, which shall be kept with the patient's medical record.

(c) Each person admitted to a designated facility for 72–hour evaluation and treatment shall be given the following information by admission staff at the evaluation unit. The information shall be given orally and in writing and in a language or modality accessible to the person. The written information shall be available in the person's native language or the language which is the person's principal means of communication. The information shall be in substantially the following form:

My name is_____.
My position here is _____.

You are being placed into the psychiatric unit because it is our professional opinion that as a result of mental disorder, you are likely to:

(check applicable)
harm yourself _____
harm someone else _____
be unable to take care of your own
food, clothing, and housing needs _____
We feel this is true because

_____
(herewith a listing of the facts upon which the allegation of dangerous or gravely disabled due to mental disorder is based, including pertinent facts arising from the admission interview.)

You will be held on the ward for a period up to 72 hours.

This does not include weekends or holidays.

Your 72–hour period will begin _____
(day and time.)

During these 72 hours you will be evaluated by the hospital staff, and you may be given treatment, including medications. It is possible for you to be released before the end of the 72 hours. But if the staff decides that you need continued treatment you can be held for a longer period of time. If you are held longer than 72 hours you have the right to a lawyer and a qualified interpreter and a hearing before a judge. If you are unable to pay for the lawyer, then one will be provided free.

(d) For each patient admitted for 72–hour evaluation and treatment, the facility shall keep with the patient's medical record a record of the advisement given pursuant to subdivision (c) which shall include:

(1) Name of person performing advisement.

(2) Date.

(3) Whether advisement was completed.

(4) If not completed, a statement of good cause.

If the advisement was not completed at admission, the advisement process shall be continued on the ward until completed. A record of the matters prescribed by subdivisions (a), (b), and (c) shall be kept with the patient's medical record.

(Added by Stats.1977, c. 1021, p. 3058, § 1. Amended by Stats.1979, c. 373, p. 1394, § 362.)

Article 1.5 DETENTION OF INEBRIATES FOR EVALUATION AND TREATMENT

§ 5170. Dangerous or gravely disabled person; taking into civil protective custody

When any person is a danger to others, or to himself, or gravely

disabled as a result of inebriation, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, or other person designated by the county may, upon reasonable cause, take, or cause to be taken, the person into civil protective custody and place him in a facility designated by the county and approved by the State Department of Alcohol and Drug Abuse as a facility for 72–hour treatment and evaluation of inebriates.
(Added by Stats.1969, c. 1472, p. 3015, § 2. Amended by Stats.1970, c. 516, p. 1006, § 8; Stats.1970, c. 1627, p. 3441, § 11; Stats.1971, c. 1593, p. 3338, § 369; Stats.1971, c. 1581, p. 3189, § 2; Stats.1973, c. 142, p. 416, § 69, eff. June 30, 1973, operative July 1, 1973; Stats.1977, c. 1252, p. 4568, § 555, operative July 1, 1978; Stats.1978, c. 429, p. 1453, § 204, eff. July 17, 1978, operative July 1, 1978.)

§ 5170.1. Treatment and evaluation facilities; inclusions

A 72–hour treatment and evaluation facility shall include one or more of the following:

(1) A screening, evaluation, and referral facility which may be accomplished by a mobile crisis unit, first aid station or ambulatory detoxification unit;

(2) A detoxification facility for alcoholic and acutely intoxicated persons.

(3) An alcohol recovery house.
(Added by Stats.1974, c. 1024, p. 2222, § 1, eff. Sept. 23, 1974.)

§ 5170.3. Evaluation facility; application

Such evaluation facility shall require an application in writing stating the circumstances under which the person's condition was called to the attention of the officer, member of the attending staff, or other designated person, and stating that the officer, member of the attending staff, or other designated person believes as a result of his personal observations that the person is, as a result of inebriation, a danger to others, or to himself, or gravely disabled or has violated subdivision (f) of Section 647 of the Penal Code.
(Added by Stats.1971, c. 1581, p. 3189, § 3.)

§ 5170.5. Right to make telephone calls

Any person placed in an evaluation facility has, immediately after he is taken to an evaluation facility and except where physically impossible, no later than three hours after he is placed in such facility or taken to such unit, the right to make, at his own expense, at least two completed telephone calls. If the person placed in the evaluation facility does not have money upon him with which to make such calls, he shall be allowed free at least two completed local toll free or collect telephone calls.
(Added by Stats.1971, c. 1581, p. 3189, § 4. Amended by Stats.1974, c. 1024, p. 2223, § 2, eff. Sept. 23, 1974.)

§ 5170.7. Release upon request; determination

A person who requests to be released from the facility before 72 hours have elapsed shall be released only if the psychiatrist directly responsible for the person's treatment believes, as a result of his or her personal observations, that the person is not a danger to others, or to himself or herself. If any other professional person who is authorized to release the person, believes the person should be released before 72 hours have elapsed, and the psychiatrist directly responsible for the person's treatment objects, the matter shall be referred to the medical director of the facility for the final decision. However, if the medical director is not a psychiatrist, he or she shall appoint a designee who is a psychiatrist. If the matter is referred, the person shall be released before 72 hours have elapsed only if the psychiatrist making the final decision believes, as a result of his or her personal observations, that the person is not a danger to others, or to himself or herself.
(Added by Stats.1971, c. 1581, p. 3190, § 5. Amended by Stats.1985, c. 1288, § 4, eff. Sept. 30, 1985.)

§ 5171. Detention for evaluation; services provided

If the facility for 72–hour treatment and evaluation of inebriates admits the person, it may detain him for evaluation and detoxification treatment, and such other treatment as may be indicated, for a period not to exceed 72 hours. Saturdays, Sundays and holidays shall be included for the purpose of calculating the 72–hour period. However, a person may voluntarily remain in such facility for more than 72 hours if the professional person in charge of the facility determines the person is in need of and may benefit from further treatment and care, provided any person who is taken or caused to be taken to the facility shall have priority for available treatment and care over a person who has voluntarily remained in a facility for more than 72 hours.

If in the judgment of the professional person in charge of the facility providing evaluation and treatment, the person can be properly served without being detained, he shall be provided evaluation, detoxification treatment or other treatment, crisis intervention, or other inpatient or outpatient services on a voluntary basis.
(Added by Stats.1969, c. 1472, p. 3016, § 2. Amended by Stats.1971, c. 1581, p. 3190, § 6.)

§ 5172. Evaluation; treatment and care; release or other disposition

Each person admitted to a facility for 72–hour treatment and evaluation under the provisions of this article shall receive an evaluation as soon after he or she is admitted as possible and shall receive whatever treatment and care his or her condition requires for the full period that he or she is held. The person shall be released before 72 hours have elapsed only if, the psychiatrist directly responsible for the person's treatment believes, as a result of his or her personal observations, that the person no longer requires evaluation or treatment. If any other professional person who is authorized to release the person, believes the person should be released before 72 hours have elapsed, and the psychiatrist directly responsible for the person's treatment objects, the matter shall be referred to the medical director of the facility for the final decision. However, if the medical director is not a psychiatrist, he or she shall appoint a designee who is a psychiatrist. If the matter is referred, the person shall be released before 72 hours have elapsed only if the psychiatrist making the final decision believes, as a result of his or her personal observations, that the person no longer requires evaluation or treatment.

Persons who have been detained for evaluation and treatment shall be released, referred for further care and treatment on a voluntary basis, or, if the person, as a result of impairment by chronic alcoholism, is a danger to others or to himself or herself, or gravely disabled, he or she may be certified for intensive treatment, or a conservator or temporary conservator shall be appointed for him or her pursuant to this part as required.
(Added by Stats.1969, c. 1472, p. 3016, § 2. Amended by Stats.1971, c. 1443, p. 2848, § 1; Stats.1985, c. 1288, § 5, eff. Sept. 30, 1985.)

§ 5172.1. Voluntary application by inebriate for admission

Any person who is a danger to others, or to himself, or gravely disabled as a result of inebriation, may voluntarily apply for admission to a 72–hour evaluation and detoxification treatment facility for inebriates.
(Added by Stats.1971, c. 1581, p. 3190, § 7.)

§ 5173. Exemption from liability

(a) Notwithstanding Section 5113, if the provisions of Section 5170.7 or 5172 have been met, the professional person in charge of the facility providing 72–hour treatment and evaluation, the medical director of the facility or his or her designee described in Sections 5170.7 and 5172, and the psychiatrist directly responsible for the person's treatment shall not be held civilly or criminally liable for any action by a person released before the end of 72 hours pursuant to this article.

(b) The professional person in charge of the facility providing 72–hour treatment and evaluation, the medical director of the facility or his or her designee described in Sections 5170.7 and 5172, and the psychiatrist directly responsible for the person's treatment shall not be held civilly or criminally liable for any action by a person released at the end of the 72 hours pursuant to this article.

(c) The peace officer responsible for the detainment of the person shall not be civilly or criminally liable for any action by a person released at or before the end of the 72 hours pursuant to this article.
(Added by Stats.1969, c. 1472, p. 3016, § 2. Amended by Stats.1985, c. 1288, § 6, eff. Sept. 30, 1985.)

§ 5174. Funding

It is the intent of the Legislature (a) that facilities for 72–hour treatment and evaluation of inebriates be subject to state funding under Part 2 (commencing with Section 5600) of this division only if they provide screening, evaluation and referral services and have available medical services in the facility or by referral agreement with an appropriate medical facility, and would normally be considered an integral part of a community health program; (b) that state reimbursement under Part 2 (commencing with Section 5600) for such 72–hour facilities and intensive treatment facilities, under this article shall not be included as priority funding as are reimbursements for other county expenditures under this part for involuntary treatment services, but may be provided on the basis of new and expanded services if funds for new and expanded services are available; that while facilities receiving funds from other sources may, if eligible for funding under this division, be designated as 72–hour facilities, or intensive treatment facilities for the purposes of this article, funding of such facilities under this division shall not be substituted for such previous funding.

No 72–hour facility, or intensive treatment facility for the purposes of this article shall be eligible for funding under Part 2 (commencing with Section 5600) of this division until approved by the Director of Alcohol and Drug Abuse in accordance with standards established by the State Department of Alcohol and Drug Abuse in regulations adopted pursuant to this part. To the maximum extent possible, each county shall utilize services provided for inebriates and persons impaired by chronic alcoholism by federal and other funds presently used for such services, including federal and other funds made available to the State Department of Rehabilitation and the State Department of Alcohol and Drug Abuse. McAteer funds shall not be utilized for the purposes of the 72–hour involuntary holding program as outlined in this chapter.
(Added by Stats.1969, c. 1472, p. 3016, § 2. Amended by Stats.1971, c. 1443, p. 2848, § 2; Stats.1971, c. 1593, p. 3338, § 370; Stats.1971, c. 1581, p. 3190, § 8; Stats.1973, c. 142, p. 416, § 70, eff. June 30, 1973, operative July 1, 1973; Stats.1973, c. 1212, p. 2836, § 326; Stats.1974, c. 1024, p. 2223, § 3, eff. Sept. 23, 1974; Stats.1977, c. 1252, p. 4568, § 556, operative July 1, 1978; Stats.1978, c. 429, p. 1453, § 205, eff. July 17, 1978, operative July 1, 1978.)

§ 5175. Evaluation and treatment of other persons

Nothing in this article shall be construed to prevent a facility designated as a facility for 72–hour evaluation and treatment of inebriates from also being designated as a facility for 72–hour evaluation and treatment of other persons subject to this part, including persons impaired by chronic alcoholism.
(Added by Stats.1969, c. 1472, p. 3016, § 2.)

§ 5176. Counties to which article applicable; designation of facilities and capacities

This article shall apply only to those counties wherein the board of supervisors has adopted a resolution stating that suitable facilities exist within the county for the care and treatment of inebriates and persons impaired by chronic alcoholism, designating the facilities to be used as facilities for 72–hour treatment and evaluation of inebriates and for the extensive treatment of persons impaired by chronic alcoholism, and otherwise adopting the provisions of this article.

Each county Short–Doyle plan for a county to which this article is made applicable shall designate the specific facility or facilities for 72–hour evaluation and detoxification treatment of inebriates and for intensive treatment of persons impaired by chronic alcoholism and for the treatment of such persons on a voluntary basis under this article, and shall specify the maximum number of patients that can be served at any one time by each such facility.
(Added by Stats.1969, c. 1472, p. 3016, § 2. Amended by Stats.1971, c. 1443, p. 2849, § 3; Stats.1974, c. 1024, p. 2223, § 4, eff. Sept. 23, 1974.)

Article 2 COURT–ORDERED EVALUATION FOR MENTALLY DISORDERED PERSONS

§ 5200. Persons who may be given evaluation; consideration of privacy and dignity

Any person alleged, as a result of mental disorder, to be a danger to others, or to himself, or to be gravely disabled, may be given an evaluation of his condition under a superior court order pursuant to this article. The provisions of this article shall be carried out with the utmost consideration for the privacy and dignity of the person for whom a court–ordered evaluation is requested.
(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5201. Petition by individual

Any individual may apply to the person or agency designated by the county for a petition alleging that there is in the county a person who is, as a result of mental disorder a danger to others, or to himself, or is gravely disabled, and requesting that an evaluation of the person's condition be made.
(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5202. Pre–petition screening; report of findings

The person or agency designated by the county shall prepare the petition and all other forms required in the proceeding, and shall be responsible for filing the petition. Before filing the petition, the person or agency designated by the county shall request the person or agency designated by the county and approved by the State Department of Mental Health to provide prepetition screening to determine whether there is probable cause to believe the allegations. The person or agency providing prepetition screening shall conduct a reasonable investigation of the allegations and make a reasonable effort to personally interview the subject of the petition. The screening shall also determine whether the person will agree voluntarily to receive crisis intervention services or an evaluation in his own home or in a facility designated by the county and approved by the State Department of Mental Health. Following prepetition screening, the person or agency designated by the county shall file the petition if satisfied that there is probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled, and that the person will not voluntarily receive evaluation or crisis intervention.

If the petition is filed, it shall be accompanied by a report containing the findings of the person or agency designated by the county to provide prepetition screening. The prepetition screening report submitted to the superior court shall be confidential and shall be subject to the provisions of Section 5328.
(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2645, § 22, operative July 1, 1969; Stats.1971, c. 1593, p. 3339, § 371, operative July 1, 1973; Stats.1977, c. 1252, p. 4569, § 557, operative July 1, 1978; Stats.1980, c. 1169, p. 3935, § 1.)

§ 5203. False application for petition; offense; civil liability

Any individual who seeks a petition for court–ordered evaluation knowing that the person for whom the petition is sought is not, as a result of mental disorder, a danger to himself, or to others, or gravely disabled is guilty of a misdemeanor, and may be held liable in civil damages by the person against whom the petition was sought.
(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1423, § 7, eff. Aug. 8, 1969, operative July 1, 1969.)

§ 5204. Petition; contents

The petition for a court–ordered evaluation shall contain the following:

(a) The name and address of the petitioner and his interest in the case.

(b) The name of the person alleged, as a result of mental disorder, to be a danger to others, or to himself, or to be gravely disabled, and, if known to the petitioner, the address, age, sex, marital status, and occupation of the person.

(c) The facts upon which the allegations of the petition are based.

(d) The name of, as a respondent thereto, every person known or believed by the petitioner to be legally responsible for the care, support, and maintenance of the person alleged, as a result of mental disorder, to be a danger to others, or to himself, or to be gravely disabled, and the address of each such person, if known to the petitioner.

(e) Such other information as the court may require.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5205. Petition; form

The petition shall be in substantially the following form:

In the Superior Court of the State of California for the County of _____

_____

The People of the State of California
Concerning
_____ and
_____
Respondents

No_____
Petition for
Evaluation

_____, residing at _____ (tel. _____), being duly sworn, alleges: That there is now in the county, in the City or Town of_____, a person named _____, who resides at_____, and who is, as a result of mental disorder:

(1) A danger to others.

(2) A danger to himself.

(3) Gravely disabled as defined in subdivision (h) of Section 5008 of the Welfare and Institutions Code (Strike out all inapplicable classifications).

That the person is _____ years of age; that ___ the person is _____ (sex); and that ___ the person is _____ (single, married, widowed, or divorced); and that ____ occupation is _____.

That the facts upon which the allegations of the petition are based are as follows: That ___ the person, at _____ in the county on the_____day of ____ , 20 , _____
_____
_____

That petitioner's interest in the case is _____
_____

That the person responsible for the care, support, and maintenance of the person, and their relationship to the person are, so far as known to the petitioner, as follows: (Give names, addresses, and relationship of persons named as respondents).

Wherefore, petitioner prays that evaluation be made to determine the condition of _____ , alleged, as a result of mental disorder, to be a danger to others, or to himself or herself, or to be gravely disabled.

_____
Petitioner

Subscribed and sworn to before me this_____ day of ____ , 20 .

_____ , Clerk of the Court
By_____ Deputy

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2645, § 23, operative July 1, 1969; Stats.2002, c. 784 (S.B.1316), § 618; Stats.2003, c. 62 (S.B.600), § 325.)

§ 5206. Order for evaluation; issuance; service; presence of advisors; procedure on non–appearance; release or other disposition

Whenever it appears, by petition pursuant to this article, to the satisfaction of a judge of a superior court that a person is, as a result of mental disorder, a danger to others, or to himself, or gravely disabled, and the person has refused or failed to accept evaluation voluntarily, the judge shall issue an order notifying the person to submit to an evaluation at such time and place as designated by the judge. The order for an evaluation shall be served as provided in Section 5208 by a peace officer, counselor in mental health, or a court–appointed official. The person shall be permitted to remain in his home or other place of his choosing prior to the time of evaluation, and shall be permitted to be accompanied by one or more of his relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. If the person to receive evaluation so requests, the individual or individuals who accompany him may be present during the evaluation.

If the person refuses or fails to appear for evaluation after having been properly notified, a peace officer, counselor in mental health, or a court–appointed official shall take the person into custody and place him in a facility designated by the county as a facility for treatment and evaluation. The person shall be evaluated as promptly as possible, and shall in no event be detained longer than 72 hours under the court order, excluding Saturdays, Sundays, and holidays if treatment and evaluation services are not available on those days.

Persons who have been detained for evaluation shall be released, referred for care and treatment on a voluntary basis, certified for intensive treatment, or recommended for conservatorship pursuant to this part, as required.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5207. Order for evaluation; form

The order for evaluation shall be in substantially the following form:

In the Superior Court of the State of California for the County of . . . . . .

_____

The People of the State of California
Concerning
. . . . . and
. . . . . .
Respondents

No. . . . . .
Order
for
Evaluation
or Detention

The People of the State of California to . . . . . .
. . . . . :

(Peace officer, counselor in mental health, or other official appointed by the court)

The petition of . . . . . has been presented this day to me, a Judge of the Superior Court for the County of . . . . . , State of California, from which it appears that there is now in this county, at . . . . . , a person by the name of . . . . . , who is, as a result of mental disorder, a danger to others, or to himself, or gravely disabled.

Now, therefore, you are directed to notify . . . . . to submit to an evaluation at . . . . . on the . . . . . day of . . . . . , 19. . . , at . . . . o'clock . . . m.

. . . . . shall be permitted to be accompanied by one or more of his relatives, friends, an attorney, a personal physician, or other professional or religious advisor.

The individual or individuals who accompany . . . . . may be present during the evaluation if so requested by . . . . . .

*Provision for Detention for Evaluation

If the person fails or refuses to appear for evaluation when notified by order of this court, you are hereby directed to detain said . . . . . or cause him to be detained at . . . . . for a period no longer than 72 hours, excluding Saturdays, Sundays, and holidays if

evaluation services are not available on those days, for the purposes of evaluation.

I hereby direct that a copy of this order together with a copy of the petition be delivered to said person and his representative, if any, at the time of his notification; and I further authorize the service of this order at any hour of the day or night.

Witness my hand, this . . . . . day of . . . . , 19. . . .

. . . . . .
Judge of the Superior Court

*This paragraph is applicable only if the person to be evaluated fails or refuses to appear for evaluation after having been properly notified.

Return of Order

I hereby certify that I received the above order for the evaluation of . . . . . and on the . . . . . day of . . . . , 19. . . , personally served a copy of the order and of the petition on . . . . . and the professional person in charge of the . . . . . , a facility for treatment and evaluation, or his designee.

Dated: . . . . . , 19. . . .

. . . . . .
Signature and Title

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5208. Service of petition and order; notice of failure to appear

As promptly as possible, a copy of the petition and the order for evaluation shall be personally served on the person to be evaluated and the professional person in charge of the facility for treatment and evaluation named in the order, or his designee.

If the person to be evaluated fails to appear for an evaluation at the time designated in the order, the professional person in charge, or his designee, shall notify the person who served the order to have the person to be evaluated detained pursuant to the order.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5210. Precautions to preserve and safeguard personal property of patient; property report; responsible relative

At the time a person is taken into custody for evaluation, or within a reasonable time thereafter, unless a responsible relative or the guardian or conservator of the person is in possession of the person's personal property, the person taking him into custody shall take reasonable precautions to preserve and safeguard the personal property in the possession of or on the premises occupied by the person. The person taking him into custody shall then furnish to the court a report generally describing the person's property so preserved and safeguarded and its disposition, in substantially the form set forth in Section 5211; except that if a responsible relative or the guardian or conservator of the person is in possession of the person's property, the report shall include only the name of the relative or guardian or conservator and the location of the property, whereupon responsibility of the person taking him into custody for such property shall terminate.

As used in this section, "responsible relative" includes the spouse, parent, adult child, or adult brother or sister of the person, except that it does not include the person who applied for the petition under this article.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5211. Property report; form

The report of a patient's property required by Section 5210 to be made by the person taking him into custody for evaluation shall be in substantially the following form:

Report of Officer

I hereby report to the Superior Court for the County of . . . . . that the personal property of the person apprehended, described generally as . . . . . was preserved and safeguarded by . . . . . (Insert name of person taking him into custody, responsible relative, guardian, or conservator).

That property is now located at . . . . . .

Dated: . . . . . 19. . . .

. . . . . .
Signature and Title

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5212. Plain clothes officers; vehicles

Whenever possible, persons charged with service of orders and apprehension of persons pursuant to this article shall dress in plain clothes and travel in unmarked vehicles.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1423, § 8, eff. Aug. 8, 1969, operative July 1, 1969.)

§ 5213. Detention for treatment; duration; written and oral information on effects of medication

(a) If, upon evaluation, the person is found to be in need of treatment because he or she is, as a result of mental disorder, a danger to others, or to himself or herself, or is gravely disabled, he or she may be detained for treatment in a facility for 72–hour treatment and evaluation. Saturdays, Sundays, and holidays may be excluded from the 72–hour period if the State Department of Mental Health certifies for each facility that evaluation and treatment services cannot reasonably be made available on those days. The certification by the department is subject to renewal every two years. The department shall adopt regulations defining criteria for determining whether a facility can reasonably be expected to make evaluation and treatment services available on Saturdays, Sundays, and holidays.

(b) Persons who have been detained for evaluation and treatment, who are receiving medications as a result of their mental illness, shall be given, as soon as possible after detention, written and oral information about the probable effects and possible side effects of the medication, by a person designated by the mental health facility where the person is detained. The State Department of Mental Health shall develop and promulgate written materials on the effects of medications, for use by county mental health programs as disseminated or as modified by the county mental health program, addressing the probable effects and the possible side effects of the medication. The following information shall be given orally to the patient:

(1) The nature of the mental illness, or behavior, that is the reason the medication is being given or recommended.

(2) The likelihood of improving or not improving without the medications.

(3) Reasonable alternative treatments available.

(4) The name and type, frequency, amount, and method of dispensing the medications, and the probable length of time that the medications will be taken.

The fact that the information has or has not been given shall be indicated in the patient's chart. If the information has not been given, the designated person shall document in the patient's chart the justification for not providing the information. A failure to give information about the probable effects and possible side effects of the medication shall not constitute new grounds for release.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1986, c. 872, § 2.)

Article 3 COURT–ORDERED EVALUATION FOR PERSONS IMPAIRED BY CHRONIC ALCOHOLISM OR DRUG ABUSE

§ 5225. Order for evaluation; transfer from justice court

Whenever a criminal defendant who appears, as a result of chronic alcoholism or the use of narcotics or restricted dangerous drugs, to be a danger to others, to himself, or to be gravely disabled, is brought

before any judge, the judge may order the defendant's evaluation under conditions set forth in this article, provided evaluation services designated in the county plan pursuant to Section 5654 are available.
(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2646, § 24, operative July 1, 1969; Stats.1969, c. 722, p. 1423, § 9, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1970, c. 1129, p. 2007, § 4; Stats.1977, c. 1257, p. 4788, § 128, eff. Oct. 3, 1977; Stats.1979, c. 373, p. 1396, § 363.)

§ 5226. Advice as to rights and consequences; right of counsel

Such a criminal defendant must be advised of his right to immediately continue with the criminal proceeding, and it is the duty of the judge to apprise the defendant fully of his option and of the consequences which will occur if the defendant chooses the evaluation procedures. The defendant shall have a right to legal counsel at the proceedings at which the choice is made.
(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5226.1. Dismissal or suspension of proceedings on order for evaluation; resumption or dismissal of criminal proceedings; conservatorship

If a judge issues an order for evaluation under conditions set forth in this article, proceedings on the criminal charge then pending in the court from which the order for evaluation issued shall be dismissed or suspended until such time as the evaluation of the defendant and the subsequent detention of the defendant for involuntary treatment, if any, are completed. Upon completion of such evaluation and detention, if any, the defendant shall, if such criminal charge has not been dismissed, be returned by the sheriff of the county in which the order of evaluation was made, from the evaluation or intensive treatment facility to the custody of the sheriff who shall return the defendant to the court where the order for evaluation was made, and proceedings on the criminal charge shall be resumed or dismissed. If, during evaluation or detention for involuntary treatment, the defendant is recommended for conservatorship, and if the criminal charge has not previously been dismissed, the defendant shall be returned by the sheriff to the court in which such charge is pending for the disposition of the criminal charge prior to the initiation of the conservatorship proceedings. The judge of such court may order such defendant to be detained in the evaluation or treatment facility until the day set for the resumption of the proceedings on the criminal charge.
(Added by Stats.1968, c. 1199, p. 2274, § 1, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1423, § 10, eff. Aug. 8, 1969, operative July 1, 1969.)

§ 5227. Order for evaluation; form

The order for evaluation shall be in substantially the following form:

In the . . . . . Court of the State of California for the County of . . . . . .

The People of the State of California Concerning . . . . . and . . . . . . Respondents	No. . . . . . Order for Evaluation

The People of the State of California to . . . . . :

(Professional person in charge of the facility providing evaluation) . . . . . has appeared before me and appears to be, as a result of . . . . . (chronic alcoholism, the use of narcotics, or the use of restricted dangerous drugs), a danger to himself, or others, or gravely disabled.

Now, therefore, you are directed to evaluate . . . . . at . . . . . on the . . . . . day of . . . . . , 19. . . , at . . . o'clock . . . m.

Witness my hand, this . . . . . day of . . . . . , 19. . . .

. . . . . .
Judge of the . . . . . Court

Return of Order

I hereby certify that I received the above order for the evaluation of . . . . . and on the . . . . . day of . . . . . , 19. . . . , personally served a copy of the order and of the petition on the professional person in charge of the . . . . . , a facility for treatment and evaluation, or his designee.

Dated: . . . . . , 19. . . .

. . . . . .
Signature and title

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2647, § 25, operative July 1, 1969; Stats.1970, c. 1129, p. 2007, § 5.)

§ 5228. Order of evaluation; service of copy

As promptly as possible, a copy of the order for evaluation shall be personally served on the person to be evaluated and the professional person in charge of the facility for treatment and evaluation named in the order, or his designee.
(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5229. Precautions to preserve and safeguard personal property of patient; property report; responsible relative

At the time a person is ordered to undergo evaluation, or within a reasonable time thereafter, unless a responsible relative or the guardian or conservator of the person is in possession of the person's personal property, the person shall take reasonable precautions to preserve and safeguard the personal property in the possession of or on the premises occupied by the person. The person responsible for taking him to the evaluation facility shall then furnish to the court a report generally describing the person's property so preserved and safeguarded and its disposition, in substantially the form set forth in Section 5211; except that if a responsible relative or the guardian or conservator of the person is in possession of the person's property, the report shall include only the name of the relative or guardian or conservator and the location of the property, whereupon responsibility of the person responsible for taking him to the evaluation facility for such property shall terminate.

As used in this section, "responsible relative" includes the spouse, parent, adult child, or adult brother or sister of the person.
(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5230. Detention for treatment

If, upon evaluation, the person is found to be in need of treatment because he is, as a result of impairment by chronic alcoholism or the use of narcotics or restricted dangerous drugs, a danger to others, or to himself, or is gravely disabled, he may be detained for treatment in a facility for 72–hour treatment and evaluation. Except as provided in this section, he shall in no event be detained longer than 72 hours from the time of evaluation or detention for evaluation, excluding Saturdays, Sundays and holidays if treatment services are not available on those days.

Persons who have been detained for evaluation and treatment shall be released if the criminal charge has been dismissed; released to the custody of the sheriff or continue to be detained pursuant to court order under Section 5226.1; referred for further care and treatment on a voluntary basis, subject to the disposition of the criminal action; certified for intensive treatment; or recommended for conservatorship pursuant to this part, subject to the disposition of the criminal charge; as required.
(Formerly § 5231, added by Stats.1967, c. 1667, p. 4085, § 36, operative July 1, 1969. Renumbered § 5230 and amended by Stats.1968, c. 1374, p. 2647, § 27, operative 1, 1969. Amended by Stats.1969, c. 722, p. 1424, § 11, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1970, c. 1129, p. 2008, § 6.)

Article 4 CERTIFICATION FOR INTENSIVE TREATMENT

§ 5250. Time limitation or certification for intensive treatment; grounds for certification

If a person is detained for 72 hours under the provisions of Article 1 (commencing with Section 5150), or under court order for evaluation pursuant to Article 2 (commencing with Section 5200) or Article 3 (commencing with Section 5225) and has received an evaluation, he or she may be certified for not more than 14 days of intensive treatment related to the mental disorder or impairment by chronic alcoholism, under the following conditions:

(a) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and has found the person is, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled.

(b) The facility providing intensive treatment is designated by the county to provide intensive treatment, and agrees to admit the person. No facility shall be designated to provide intensive treatment unless it complies with the certification review hearing required by this article. The procedures shall be described in the county Short–Doyle plan as required by Section 5651.3.

(c) The person has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis.

(d) (1) Notwithstanding paragraph (1) of subdivision (h) of Section 5008, a person is not "gravely disabled" if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter.

(2) However, unless they specifically indicate in writing their willingness and ability to help, family, friends, or others shall not be considered willing or able to provide this help.

(3) The purpose of this subdivision is to avoid the necessity for, and the harmful effects of, requiring family, friends, and others to publicly state, and requiring the certification review officer to publicly find, that no one is willing or able to assist the mentally disordered person in providing for the person's basic needs for food, clothing, or shelter.

(Added by Stats.1982, c. 1598, § 4. Amended by Stats.1989, c. 999, § 1.)

§ 5250.1. Unconditional release from intensive treatment; notice; destruction of records

The professional person in charge of a facility providing intensive treatment, pursuant to Section 5250 or 5270.15, or that person's designee, shall notify the county mental health director, or the director's designee, and the peace officer who made the original written application for 72–hour evaluation pursuant to Section 5150 or a person who is designated by the law enforcement agency that employs the peace officer, that the person admitted pursuant to the application has been released unconditionally if all of the following conditions apply:

(a) The peace officer has requested notification at the time he or she makes the application for 72–hour evaluation.

(b) The peace officer has certified in writing at the time he or she made the application that the person has been referred to the facility under circumstances which, based upon an allegation of facts regarding actions witnessed by the officer or another person, would support the filing of a criminal complaint.

(c) The notice is limited to the person's name, address, date of admission for 72–hour evaluation, date of certification for intensive treatment, and date of release.

If a police officer, law enforcement agency, or designee of the law enforcement agency, possesses any record of information obtained pursuant to the notification requirements of this section, the officer, agency, or designee shall destroy that record two years after receipt of notification.

(Added by Stats.1983, c. 755, § 2. Amended by Stats.1988, c. 1517, § 2.)

§ 5251. Notice of certification; signatories

For a person to be certified under this article, a notice of certification shall be signed by two people. The first person shall be the professional person, or his or her designee, in charge of the agency or facility providing evaluation services. A designee of the professional person in charge of the agency or facility shall be a physician or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders.

The second person shall be a physician or psychologist who participated in the evaluation. The physician shall be, if possible, a board certified psychiatrist. The psychologist shall be licensed and have at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders.

If the professional person in charge, or his or her designee, is the physician who performed the medical evaluation or a psychologist, the second person to sign may be another physician or psychologist unless one is not available, in which case a licensed clinical social worker or a registered nurse who participated in the evaluation shall sign the notice of certification.

(Added by Stats.1982, c. 1598, § 4. Amended by Stats.1998, c. 1013 (A.B.1439), § 2.)

§ 5252. Necessity for, and form of, notice of certification

A notice of certification is required for all persons certified for intensive treatment pursuant to Section 5250 or 5270.15, and shall be in substantially the following form (strike out inapplicable section):

The authorized agency providing evaluation services in the County of _____ has evaluated the condition of:

Name _____

Address _____

Age _____

Sex _____

Marital status _____

We the undersigned allege that the above–named person is, as a result of mental disorder or impairment by chronic alcoholism:

(1) A danger to others.

(2) A danger to himself or herself.

(3) Gravely disabled as defined in paragraph (1) of subdivision (h) or subdivision (*l*) of Section 5008 of the Welfare and Institutions Code.

The specific facts which form the basis for our opinion that the above–named person meets one or more of the classifications indicated above are as follows:

(certifying persons to fill in blanks) _____

_____

_____

[Strike out all inapplicable classifications.]

The above–named person has been informed of this evaluation, and has been advised of the need for, but has not been able or willing to accept treatment on a voluntary basis, or to accept referral to, the following services:

_____

_____

_____

_____

_____

We, therefore, certify the above–named person to receive intensive treatment related to the mental disorder or impairment by chronic alcoholism beginning this _____ day of _____, 19___, in the intensive treatment facility herein named _____.

(Month)

_____

(Date)

Signed _____
Signed _____
Countersigned_____
(Representing facility)

I hereby state that I delivered a copy of this notice this day to the above–named person and that I informed him or her that unless judicial review is requested a certification review hearing will be held within four days of the date on which the person is certified for a period of intensive treatment and that an attorney or advocate will visit him or her to provide assistance in preparing for the hearing or to answer questions regarding his or her commitment or to provide other assistance. The court has been notified of this certification on this day.

Signed _____

(Added by Stats.1982, c. 1598, § 4. Amended by Stats.1983, c. 319, § 1; Stats.1988, c. 1517, § 3.)

§ 5253. Delivery of copy of certification notice; designation of any other person to be informed

A copy of the certification notice shall be personally delivered to the person certified, the person's attorney, or the attorney or advocate designated in Section 5252. The person certified shall also be asked to designate any person who is to be sent a copy of the certification notice. If the person certified is incapable of making this designation at the time of certification, he or she shall be asked to designate a person as soon as he or she is capable.

(Added by Stats.1982, c. 1598, § 4. Amended by Stats.1983, c. 319, § 2.)

§ 5254. Certification review hearing; notice of entitlement; time; issues; rights of person certified

The person delivering the copy of the notice of certification to the person certified shall, at the time of delivery, inform the person certified that he or she is entitled to a certification review hearing, to be held within four days of the date on which the person is certified for a period of intensive treatment in accordance with Section 5256 unless judicial review is requested, to determine whether or not probable cause exists to detain the person for intensive treatment related to the mental disorder or impairment by chronic alcoholism. The person certified shall be informed of his or her rights with respect to the hearing, including the right to the assistance of another person to prepare for the hearing or to answer other questions and concerns regarding his or her involuntary detention or both.

(Added by Stats.1982, c. 1598, § 4. Amended by Stats.1983, c. 319, § 3; Stats.1988, c. 1517, § 4.)

§ 5254.1. Judicial review by habeas corpus; notice of right; explanation of term; right to counsel

The person delivering the copy of the notice of certification to the person certified shall, at the time of delivery, inform the person certified of his or her legal right to a judicial review by habeas corpus, and shall explain that term to the person certified, and inform the person of his or her right to counsel, including court–appointed counsel pursuant to Section 5276.

(Added by Stats.1982, c. 1598, § 4.)

§ 5255. Discussion of commitment process with person certified; assistance

As soon after the certification as practicable, an attorney or patient advocate shall meet with the person certified to discuss the commitment process and to assist the person in preparing for the certification review hearing or to answer questions or otherwise assist the person as is appropriate.

(Added by Stats.1982, c. 1598, § 4.)

§ 5256. Necessity and time for certification review hearing

When a person is certified for intensive treatment pursuant to Sections 5250 and 5270.15, a certification review hearing shall be held unless judicial review has been requested as provided in Sections 5275 and 5276. The certification review hearing shall be within four days of the date on which the person is certified for a period of intensive treatment unless postponed by request of the person or his or her attorney or advocate. Hearings may be postponed for 48 hours or, in counties with a population of 100,000 or less, until the next regularly scheduled hearing date.

(Added by Stats.1982, c. 1598, § 4. Amended by Stats.1983, c. 319, § 4; Stats.1988, c. 1517, § 5.)

§ 5256.1. Conduct of hearing; commissioner, referee, or certification review hearing officer; qualifications; location of hearing

The certification review hearing shall be conducted by either a court–appointed commissioner or a referee, or a certification review hearing officer. The certification review hearing officer shall be either a state qualified administrative law hearing officer, a medical doctor, a licensed psychologist, a registered nurse, a lawyer, a certified law student, a licensed clinical social worker, or a licensed marriage and family therapist. Licensed psychologists, licensed clinical social workers, licensed marriage and family therapists, and registered nurses who serve as certification review hearing officers shall have had a minimum of five years' experience in mental health. Certification review hearing officers shall be selected from a list of eligible persons unanimously approved by a panel composed of the local mental health director, the county public defender, and the county counsel or district attorney designated by the county board of supervisors. No employee of the county mental health program or of any facility designated by the county and approved by the State Department of Mental Health as a facility for 72–hour treatment and evaluation may serve as a certification review hearing officer.

The location of the certification review hearing shall be compatible with, and least disruptive of, the treatment being provided to the person certified. In addition, hearings conducted by certification review officers shall be conducted at an appropriate place at the facility where the person certified is receiving treatment.

(Added by Stats.1982, c. 1598, § 4. Amended by Stats.1983, c. 319, § 5; Stats.1987, c. 139, § 1; Stats.2002, c. 1013 (S.B.2026), § 97.)

§ 5256.2. Evidence; presentation

At the certification review hearing, the evidence in support of the certification decision shall be presented by a person designated by the director of the facility. In addition, either the district attorney or the county counsel may, at his or her discretion, elect to present evidence at the certification review hearing.

(Added by Stats.1982, c. 1598, § 4.)

§ 5256.3. Presence of certified person at certification review hearing; necessity; waiver

The person certified shall be present at the certification review hearing unless he or she, with the assistance of his or her attorney or advocate, waives his or her right to be present at a hearing.

(Added by Stats.1982, c. 1598, § 4.)

§ 5256.4. Rights of certified person at certification review hearing; manner of conducting hearing; notification of family members; admission and consideration of evidence

(a) At the certification review hearing, the person certified shall have the following rights:

(1) Assistance by an attorney or advocate.

(2) To present evidence on his or her own behalf.

(3) To question persons presenting evidence in support of the certification decision.

(4) To make reasonable requests for the attendance of facility employees who have knowledge of, or participated in, the certification decision.

(5) If the person has received medication within 24 hours or such longer period of time as the person conducting the hearing may designate prior to the beginning of the hearing, the person conducting the hearing shall be informed of that fact and of the probable effects of the medication.

(b) The hearing shall be conducted in an impartial and informal manner in order to encourage free and open discussion by participants. The person conducting the hearing shall not be bound by rules of procedure or evidence applicable in judicial proceedings.

(c) Reasonable attempts shall be made by the mental health facility to notify family members or any other person designated by the patient, of the time and place of the certification hearing, unless the patient requests that this information not be provided. The patient shall be advised by the facility that is treating the patient that he or she has the right to request that this information not be provided.

(d) All evidence which is relevant to establishing that the person certified is or is not as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, shall be admitted at the hearing and considered by the hearing officer.

(e) Although resistance to involuntary commitment may be a product of a mental disorder, this resistance shall not, in itself, imply the presence of a mental disorder or constitute evidence that a person meets the criteria of being dangerous to self or others, or gravely disabled.

(Added by Stats.1982, c. 1598, § 4. Amended by Stats.1986, c. 872, § 3.)

§ 5256.5. Termination of involuntary detention upon finding of lack of probable cause; certified person voluntarily remaining at facility

If at the conclusion of the certification review hearing the person conducting the hearing finds that there is not probable cause to believe that the person certified is, as a result of a mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, then the person certified may no longer be involuntarily detained. Nothing herein shall prohibit the person from remaining at the facility on a voluntary basis or the facility from providing the person with appropriate referral information concerning mental health services.

(Added by Stats.1982, c. 1598, § 4.)

§ 5256.6. Detention of certified person for involuntary care, protection and treatment upon finding of probable cause

If at the conclusion of the certification review hearing the person conducting the hearing finds that there is probable cause that the person certified is, as a result of a mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, then the person may be detained for involuntary care, protection, and treatment related to the mental disorder or impairment by chronic alcoholism pursuant to Sections 5250 and 5270.15.

(Added by Stats.1982, c. 1598, § 4. Amended by Stats.1988, c. 1517, § 6.)

§ 5256.7. Notification of decision at conclusion of certification review hearing; request for release; right to fill; hearing

The person certified shall be given oral notification of the decision at the conclusion of the certification review hearing. As soon thereafter as is practicable, the attorney or advocate for the person certified and the director of the facility where the person is receiving treatment shall be provided with a written notification of the decision, which shall include a statement of the evidence relied upon and the reasons for the decision. The attorney or advocate shall notify the person certified of the certification review hearing decision and of his or her rights to file a request for release and to have a hearing on the request before the superior court as set forth in Article 5 (commencing with Section 5275). A copy of the decision and the certification made pursuant to Section 5250 or 5270.15 shall be submitted to the superior court.

(Added by Stats.1982, c. 1598, § 4. Amended by Stats.1983, c. 319, § 6; Stats.1988, c. 1517, § 7.)

§ 5256.8. Limitation on certification review hearing requirement

The requirement that there is a certification review hearing in accordance with this article shall apply only to persons certified for intensive treatment on or after January 1, 1983.

(Added by Stats.1982, c. 1598, § 4.)

§ 5257. Termination of involuntary commitment; remaining at facility on a voluntary basis; referral information; limitation on involuntary detainment

(a) During the period of intensive treatment pursuant to Section 5250 or 5270.15, the person's involuntary detention shall be terminated and the person shall be released only if the psychiatrist directly responsible for the person's treatment believes, as a result of the psychiatrist's personal observations, that the person certified no longer is, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled. However, in those situations in which both a psychiatrist and psychologist have personally evaluated or examined a person who is undergoing intensive treatment and there is a collaborative treatment relationship between the psychiatrist and the psychologist, either the psychiatrist or psychologist may authorize the release of the person, but only after they have consulted with one another. In the event of a clinical or professional disagreement regarding the early release of a person who is undergoing intensive treatment, the person may not be released unless the facility's medical director overrules the decision of the psychiatrist or psychologist opposing the release. Both the psychiatrist and psychologist shall enter their findings, concerns, or objections into the person's medical record. If any other professional person who is authorized to release the person believes the person should be released during the designated period of intensive treatment, and the psychiatrist directly responsible for the person's treatment objects, the matter shall be referred to the medical director of the facility for the final decision. However, if the medical director is not a psychiatrist, he or she shall appoint a designee who is a psychiatrist. If the matter is referred, the person shall be released during the period of intensive treatment only if the psychiatrist making the final decision believes, as a result of the psychiatrist's personal observations, that the person certified no longer is, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled. Nothing herein shall prohibit the person from remaining at the facility on a voluntary basis or prevent the facility from providing the person with appropriate referral information concerning mental health services.

(b) A person who has been certified for a period of intensive treatment pursuant to Section 5250 shall be released at the end of 14 days unless the patient either:

(1) Agrees to receive further treatment on a voluntary basis.

(2) Is certified for an additional 14 days of intensive treatment pursuant to Article 4.5 (commencing with Section 5260).

(3) Is certified for an additional 30 days of intensive treatment pursuant to Article 4.7 (commencing with Section 5270.10).

(4) Is the subject of a conservatorship petition filed pursuant to Chapter 3 (commencing with Section 5350).

(5) Is the subject of a petition for postcertification treatment of a dangerous person filed pursuant to Article 6 (commencing with Section 5300).

(c) The amendments to this section made by Assembly Bill 348 of the 2003–04 Regular Session[1] shall not be construed to revise or expand the scope of practice of psychologists, as defined in Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(Added by Stats.1982, c. 1598, § 4. Amended by Stats.1985, c. 1288, § 7, eff. Sept. 30, 1985; Stats.1988, c. 1517, § 8; Stats.2003, c. 94 (A.B.348), § 3.)

[1]See Stats.2003, c. 94 (A.B. 348), § 3.

§ 5258. Limitation on total period of detention

After the involuntary detention has begun, the total period of detention, including intervening periods of voluntary treatment, shall not exceed the total maximum period during which the person could have been detained, if the person had been detained continuously on an involuntary basis, from the time of initial involuntary detention.
(Added by Stats.1982, c. 1598, § 4. Amended by Stats.1988, c. 1517, § 9.)

§ 5259. Permitting person certified for intensive treatment to leave facility for short periods during involuntary additional treatment

Nothing in this article shall prohibit the professional person in charge of a treatment facility, or his or her designee, from permitting a person certified for intensive treatment to leave the facility for short periods during the person's involuntary additional treatment.
(Added by Stats.1982, c. 1598, § 4.)

§ 5259.1. Detention in violation of this article; civil damages

Any individual who is knowingly and willfully responsible for detaining a person in violation of the provisions of this article is liable to that person in civil damages.
(Added by Stats.1982, c. 1598, § 4.)

§ 5259.2. Compliance with preference for one of two or more treatment facilities

Whenever a county designates two or more facilities to provide treatment, and the person to be treated, his or her family, conservator, or guardian expresses a preference for one of these facilities, the professional person certifying the person to be treated shall attempt, if administratively possible, to comply with the preference.
(Added by Stats.1982, c. 1598, § 4.)

§ 5259.3. Immunity from civil or criminal liability for release

(a) Notwithstanding Section 5113, if the provisions of Section 5257 have been met, the professional person in charge of the facility providing intensive treatment, his or her designee, the medical director of the facility or his or her designee described in Section 5257, the psychiatrist directly responsible for the person's treatment, or the psychologist shall not be held civilly or criminally liable for any action by a person released before the end of 14 days pursuant to this article.

(b) The professional person in charge of the facility providing intensive treatment, his or her designee, the medical director of the facility or his or her designee described in Section 5257, the psychiatrist directly responsible for the person's treatment, or the psychologist shall not be held civilly or criminally liable for any action by a person released at the end of the 14 days pursuant to this article.

(c) The attorney or advocate representing the person, the court–appointed commissioner or referee, the certification review hearing officer conducting the certification review hearing, and the peace officer responsible for the detainment of the person shall not be civilly or criminally liable for any action by a person released at or before the end of 14 days pursuant to this article.

(d) The amendments to this section made by Assembly Bill 348 of the 2003–04 Regular Session[1] shall not be construed to revise or expand the scope of practice of psychologists, as defined in Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.
(Added by Stats.1982, c. 1598, § 4. Amended by Stats.1983, c. 319, § 7; Stats.1985, c. 1288, § 8, eff. Sept. 30, 1985; Stats.2003, c. 94 (A.B.348), § 4.)
[1]Stats.2003, c. 94 (A.B.348), § 4.

Article 4.5 ADDITIONAL INTENSIVE TREATMENT OF SUICIDAL PERSONS

§ 5260. Confinement for further intensive treatment; conditions

At the expiration of the 14–day period of intensive treatment any person who, as a result of mental disorder or impairment by chronic alcoholism, during the 14–day period or the 72–hour evaluation period, threatened or attempted to take his own life or who was detained for evaluation and treatment because he threatened or attempted to take his own life and who continues to present an imminent threat of taking his own life, may be confined for further intensive treatment pursuant to this article for an additional period not to exceed 14 days.

Such further intensive treatment may occur only under the following conditions:

(a) The professional staff of the agency or facility providing intensive treatment services has analyzed the person's condition and has found that the person presents an imminent threat of taking his own life.

(b) The person has been advised of, but has not accepted, voluntary treatment.

(c) The facility providing additional intensive treatment is equipped and staffed to provide treatment, is designated by the county to provide such intensive treatment, and agrees to admit the person.

(d) The person has, as a result of mental disorder or impairment by chronic alcoholism, threatened or attempted to take his own life during the 14–day period of intensive treatment or the 72–hour evaluation period or was detained for evaluation and treatment because he threatened or attempted to take his own life.
(Added by Stats.1968, c. 1374, p. 2650, § 33.5, operative July 1, 1969.)

§ 5261. Second notice of certification; necessity; signing

For a person to be certified under this article, a second notice of certification must be signed by the professional person in charge of the facility providing 14–day intensive treatment under Article 4 (commencing with Section 5250) to the person and by a physician, if possible a board–qualified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. The physician or psychologist who signs shall have participated in the evaluation and finding referred to in subdivision (a) of Section 5260.

If the professional person in charge is the physician who performed the medical evaluation and finding or a psychologist, the second person to sign may be another physician or psychologist unless one is not available, in which case a social worker or a registered nurse who participated in such evaluation and finding shall sign the notice of certification.
(Added by Stats.1968, c. 1374, p. 2651, § 33.5, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1426, § 15, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1978, c. 391, p. 1243, § 4.)

§ 5262. Form of second notice of certification

A second notice of certification for imminently suicidal persons is required for all involuntary 14–day intensive treatment, pursuant to this article, and shall be in substantially the following form:

To the Superior Court of the State of California for the County of . . . . . .

The authorized agency providing 14–day intensive treatment, County of . . . . . , has custody of: . . . . . .
Name . . . . . .
Address . . . . . .
Age . . . . . .
Sex . . . . . .
Marital status . . . . . .
Religious affiliation . . . . . .

The undersigned allege that the above–named person presents an imminent threat of taking his own life.

This allegation is based upon the following facts: . . . . . .
. . . . . .
. . . . . .
. . . . . .
. . . . . .

This allegation is supported by the accompanying affidavits signed by . . . . . .

The above–named person has been informed of this allegation and has been advised of, but has not been able or willing to accept referral to, the following services:. . . . . .
. . . . . .
. . . . . .
. . . . . .
. . . . . .

We, therefore, certify the above–named person to receive additional intensive treatment for no more than 14 days beginning this . . . . . day of. . . . . , 19 . . . , in the intensive treatment facility herein
(Month)
named . . . . . .

We hereby state that a copy of this notice has been delivered this day to the above–named person and that he has been clearly advised of his continuing legal right to a judicial review by habeas corpus, and this term has been explained to him.

. . . . . .
(Date)
Signed . . . . . .
Countersigned . . . . . .
Representing intensive treatment facility

(Added by Stats.1968, c. 1374, p. 2651, § 33.5, operative July 1, 1969.)

§ 5263. Copies of second notice of certification for imminently suicidal persons; filing; delivery; designation of person to be informed

Copies of the second notice of certification for imminently suicidal persons, as set forth in Section 5262, shall be filed with the court and personally delivered to the person certified. A copy shall also be sent to the person's attorney, to the district attorney, to the public defender, if any, and to the facility providing intensive treatment.

The person certified shall also be asked to designate any person who is to be sent a copy of the certification notice. If the person certified is incapable of making such a designation at the time of certification, he or she shall be asked to designate such person as soon as he or she is capable.

(Added by Stats.1968, c. 1374, p. 2652, § 33.5, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3339, § 373, operative July 1, 1973; Stats.1977, c. 1252, p. 4569, § 559, operative July 1, 1978; Stats.1982, c. 1598, § 5; Stats.1983, c. 319, § 8.)

§ 5264. Duration of certification; release; exceptions

(a) A certification for imminently suicidal persons shall be for no more than 14 days of intensive treatment, and shall terminate only as soon as the psychiatrist directly responsible for the person's treatment believes, as a result of the psychiatrist's personal observations, that the person has improved sufficiently for him or her to leave, or is prepared to voluntarily accept treatment on referral or to remain on a voluntary basis in the facility providing intensive treatment. However, in those situations in which both a psychiatrist and psychologist have personally evaluated or examined a person who is undergoing intensive treatment and there is a collaborative treatment relationship between the psychiatrist and psychologist, either the psychiatrist or psychologist may authorize the release of the person, but only after they have consulted with one another. In the event of a clinical or professional disagreement regarding the early release of a person who is undergoing intensive treatment, the person may not be released unless the facility's medical director overrules the decision of the psychiatrist or psychologist opposing the release. Both the psychiatrist and psychologist shall enter their findings, concerns, or objections into the person's medical record. If any other professional person who is authorized to release the person believes the person should be released before 14 days have elapsed, and the psychiatrist directly responsible for the person's treatment objects, the matter shall be referred to the medical director of the facility for the final decision. However, if the medical director is not a psychiatrist, he or she shall appoint a designee who is a psychiatrist. If the matter is referred, the person shall be released before 14 days have elapsed only if the psychiatrist believes, as a result of the psychiatrist's personal observations, that the person has improved sufficiently for him or her to leave, or is prepared to accept voluntary treatment on referral or to remain in the facility providing intensive treatment on a voluntary basis.

(b) Any person who has been certified for 14 days of intensive treatment under this article and to whom Section 5226.1 is not applicable, or with respect to whom the criminal charge has been dismissed under Section 5226.1, shall be released at the end of the 14 days unless any of the following applies:

(1) The patient agrees to receive further treatment on a voluntary basis.

(2) The patient has been recommended for conservatorship pursuant to Chapter 3 (commencing with Section 5350).

(3) The patient is a person to whom Article 6 (commencing with Section 5300) of this chapter is applicable.

(c) The amendments to this section made by Assembly Bill 348 of the 2003–04 Regular Session[1] shall not be construed to revise or expand the scope of practice of psychologists, as defined in Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(Added by Stats.1968, c. 1374, p. 2652, § 33.5, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1426, § 16, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1985, c. 1288, § 9, eff. Sept. 30, 1985; Stats.2003, c. 94 (A.B.348), § 5.)

[1]Stats.2003, c. 94 (A.B.348), § 5.

§ 5265. Liability for excessive detention

Any individual who is knowingly and willfully responsible for detaining a person for more than 14 days in violation of the provisions of Section 5264 is liable to that person in civil damages.

(Added by Stats.1968, c. 1374, p. 2652, § 33.5, operative July 1, 1969.)

§ 5266. Preference for treatment facility

Whenever a county designates two or more facilities to provide intensive treatment and the person to be treated, his family, conservator or guardian expresses a preference for one such facility, the professional person certifying the person to be treated shall attempt, if administratively possible, to comply with the preference.

(Added by Stats.1968, c. 1374, p. 2652, § 33.5, operative July 1, 1969.)

§ 5267. Exemption from liability

(a) Notwithstanding Section 5113, if the provisions of Section 5264 have been met, the professional person in charge of the facility providing intensive treatment, his or her designee, the medical director of the facility or his or her designee described in Section 5264, the psychiatrist directly responsible for the person's treatment, or the psychologist shall not be held civilly or criminally liable for any action by a person released before the end of 14 days pursuant to this article.

(b) The professional person in charge of the facility providing intensive treatment, his or her designee, the medical director of the facility or his or her designee described in Section 5264, the psychiatrist directly responsible for the person's treatment, or the

psychologist shall not be held civilly or criminally liable for any action by a person released at the end of 14 days pursuant to this article.

(c) The amendments to this section made by Assembly Bill 348 of the 2003–04 Regular Session[1] shall not be construed to revise or expand the scope of practice of psychologists, as defined in Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(Added by Stats.1968, c. 1374, p. 2653, § 33.5, operative July 1, 1969. Amended by Stats.1985, c. 1288, § 10, eff. Sept. 30, 1985; Stats.2003, c. 94 (A.B.348), § 6.)

[1]Stats.2003, c. 94 (A.B.348), § 6.

§ 5268. Leaves of absence during confinement

Nothing in this article shall prohibit the professional person in charge of an intensive treatment facility, or his designee, from permitting a person certified for intensive treatment to leave the facility for short periods during the person's involuntary intensive treatment.

(Added by Stats.1968, c. 1374, p. 2653, § 33.5, operative July 1, 1969.)

Article 4.7 ADDITIONAL INTENSIVE TREATMENT

§ 5270.10. Legislative intent

It is the intent of the Legislature to reduce the number of gravely disabled persons for whom conservatorship petitions are filed and who are placed under the extensive powers and authority of a temporary conservator simply to obtain an additional period of treatment without the belief that a conservator is actually needed and without the intention of proceeding to trial on the conservatorship petition. This change will substantially reduce the number of conservatorship petitions filed and temporary conservatorships granted under this part which do not result in either a trial or a conservatorship.

(Added by Stats.1988, c. 1517, § 10.)

§ 5270.12. Counties; application of article; monitoring of compliance

This article shall be operative only in those counties in which the county board of supervisors, by resolution, authorizes its application and, by resolution, makes a finding that any additional costs incurred by the county in the implementation of this article are funded either by new funding sufficient to cover the costs incurred by the county resulting from this article, or funds redirected from cost savings resulting from this article, or a combination thereof, so that no current service reductions will occur as a result of the enactment of this article. Compliance with this section shall be monitored by the Department of Mental Health as part of their review and approval of county Short–Doyle plans.

(Added by Stats.1988, c. 1517, § 10.)

§ 5270.15. Certification for additional treatment; conditions

Upon the completion of a 14–day period of intensive treatment pursuant to Section 5250, the person may be certified for an additional period of not more than 30 days of intensive treatment under both of the following conditions:

(a) The professional staff of the agency or facility treating the person has found that the person remains gravely disabled as a result of a mental disorder or impairment by chronic alcoholism.

(b) The person remains unwilling or unable to accept treatment voluntarily.

Any person certified for an additional 30 days pursuant to this article shall be provided a certification review hearing in accordance with Section 5256 unless a judicial review is requested pursuant to Article 5 (commencing with Section 5275).

The professional staff of the agency or facility providing intensive treatment shall analyze the person's condition at intervals of not to exceed 10 days, to determine whether the person continues to meet the criteria established for certification under this section, and shall daily monitor the person's treatment plan and progress. Termination of this certification prior to the 30th day shall be made pursuant to Section 5270.35.

(Added by Stats.1988, c. 1517, § 10.)

§ 5270.20. Second notice of certification; signature by professional person in charge of facility; requirements

For a person to be certified under this article, a second notice of certification shall be signed by the professional person in charge of the facility providing intensive treatment to the person and by either a physician who shall, if possible, be a board–qualified psychiatrist, or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. The physician or psychologist who signs shall have participated in the evaluation and finding referred to in subdivision (a) of Section 5270.15.

If the professional person in charge is the physician who performed the medical evaluation and finding, or a psychologist, the second person to sign may be another physician or psychologist, unless one is not available, in which case a social worker or a registered nurse who participated in the evaluation and finding shall sign the notice of certification.

(Added by Stats.1988, c. 1517, § 10.)

§ 5270.25. Requirement of second notice for involuntary intensive treatment; form

A second notice of certification is required for all involuntary intensive treatment, pursuant to this article, and shall be in substantially the form indicated in Section 5252.

(Added by Stats.1988, c. 1517, § 10.)

§ 5270.30. Second notice of certification; filing; delivery; designation of recipient

Copies of the second notice of certification as set forth in Section 5270.25, shall be filed with the court and personally delivered to the person certified. A copy shall also be sent to the person's attorney, to the district attorney, to the public defender, if any, and to the facility providing intensive treatment.

The person certified shall also be asked to designate any individual who is to be sent a copy of the certification notice. If the person certified is incapable of making the designation at the time of certification, that person shall be given another opportunity to designate when able to do so.

(Added by Stats.1988, c. 1517, § 10.)

§ 5270.35. Certification; length of intensive treatment; termination; release of patient

(a) A certification pursuant to this article shall be for no more than 30 days of intensive treatment, and shall terminate only as soon as the psychiatrist directly responsible for the person's treatment believes, as a result of the psychiatrist's personal observations, that the person no longer meets the criteria for the certification, or is prepared to voluntarily accept treatment on a referral basis or to remain on a voluntary basis in the facility providing intensive treatment. However, in those situations in which both a psychiatrist and psychologist have personally evaluated or examined a person who is undergoing intensive treatment and there is a collaborative treatment relationship between the psychiatrist and the psychologist, either the psychiatrist or psychologist may authorize the release of the person but only after they have consulted with one another. In the event of a clinical or professional disagreement regarding the early release of a person who is undergoing intensive treatment, the person may not be released unless the facility's medical director overrules the decision of the psychiatrist or psychologist opposing the release. Both the psychiatrist and psychologist shall enter their findings, concerns, or

objections into the person's medical record. If any other professional person who is authorized to release the person believes the person should be released before 30 days have elapsed, and the psychiatrist directly responsible for the person's treatment objects, the matter shall be referred to the medical director of the facility for the final decision. However, if the medical director is not a psychiatrist, he or she shall appoint a designee who is a psychiatrist. If the matter is referred, the person shall be released before 30 days have elapsed only if the psychiatrist believes, as a result of the psychiatrist's personal observations, that the person no longer meets the criteria for certification, or is prepared to voluntarily accept treatment on referral or to remain on a voluntary basis in the facility providing intensive treatment.

(b) Any person who has been certified for 30 days of intensive treatment under this article, shall be released at the end of 30 days unless one or more of the following is applicable:

(1) The patient agrees to receive further treatment on a voluntary basis.

(2) The patient is the subject of a conservatorship petition filed pursuant to Chapter 3 (commencing with Section 5350).

(3) The patient is the subject of a petition for postcertification treatment of a dangerous person filed pursuant to Article 6 (commencing with Section 5300).

(c) The amendments to this section made by Assembly Bill 348 of the 2003–04 Regular Session[1] shall not be construed to revise or expand the scope of practice of psychologists, as defined in Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(Added by Stats.1988, c. 1517, § 10. Amended by Stats.2003, c. 94 (A.B.348), § 7.)

[1]Stats.2003, c. 94 (A.B.348), § 7.

§ 5270.40. Knowing and willful detention of a person; civil damages

Any individual who is knowingly and willfully responsible for detaining a person for more than 30 days in violation of the provisions of Section 5270.35 is liable to that person in civil damages.

(Added by Stats.1988, c. 1517, § 10.)

§ 5270.45. Preference for one facility

Whenever a county designates two or more facilities to provide intensive treatment and the person to be treated, his or her family, conservator, or guardian expresses a preference for one facility, the professional person certifying the person to be treated shall attempt, if administratively possible, to comply with the preference.

(Added by Stats.1988, c. 1517, § 10.)

§ 5270.50. Release of person prior to end of 30 days; criminal and civil liability

Notwithstanding Section 5113, if the provisions of Section 5270.35 have been met, the professional person in charge of the facility providing intensive treatment, his or her designee, and the professional person directly responsible for the person's treatment shall not be held civilly or criminally liable for any action by a person released before or at the end of 30 days pursuant to this article.

(Added by Stats.1988, c. 1517, § 10.)

§ 5270.55. Detention beyond 14–day period of intensive treatment; evaluation; appointment of conservator; additional certification; hearing

(a) Whenever it is contemplated that a gravely disabled person may need to be detained beyond the end of the 14–day period of intensive treatment and prior to proceeding with an additional 30–day certification, the professional person in charge of the facility shall cause an evaluation to be made, based on the patient's current condition and past history, as to whether it appears that the person, even after up to 30 days of additional treatment, is likely to qualify for appointment of a conservator. If the appointment of a conservator appears likely, the conservatorship referral shall be made during the 14–day period of intensive treatment.

(b) If it appears that with up to 30 days additional treatment a person is likely to reconstitute sufficiently to obviate the need for appointment of a conservator, then the person may be certified for the additional 30 days.

(c) Where no conservatorship referral has been made during the 14–day period and where during the 30–day certification it appears that the person is likely to require the appointment of a conservator, then the conservatorship referral shall be made to allow sufficient time for conservatorship investigation and other related procedures. If a temporary conservatorship is obtained, it shall run concurrently with and not consecutively to the 30–day certification period. The conservatorship hearing shall be held by the 30th day of the certification period. The maximum involuntary detention period for gravely disabled persons pursuant to Sections 5150, 5250 and 5270.15 shall be limited to 47 days. Nothing in this section shall prevent a person from exercising his or her right to a hearing as stated in Sections 5275 and 5353.

(Added by Stats.1988, c. 1517, § 10. Amended by Stats.2001, c. 854 (S.B.205), § 77.)

§ 5270.65. Permission for certified person to leave facility

Nothing in this article shall prohibit the professional person in charge of an intensive treatment facility, or a designee, from permitting a person certified for intensive treatment to leave the facility for short periods during the person's intensive treatment.

(Added by Stats.1988, c. 1517, § 10.)

Article 5 JUDICIAL REVIEW

§ 5275. Habeas corpus; request for release

Every person detained by certification for intensive treatment shall have a right to a hearing by writ of habeas corpus for his or her release after he or she or any person acting on his or her behalf has made a request for release to either (a) the person delivering the copy of the notice of certification to the person certified at the time of the delivery, or (b) to any member of the treatment staff of the facility providing intensive treatment, at any time during the period of intensive treatment pursuant to Section 5250, 5260, or 5270.10.

Any person delivering a copy of the certification notice or any member of the treatment staff to whom a request for release is made shall promptly provide the person making the request for his or her signature or mark a copy of the form set forth below. The person delivering the copy of the certification notice or the member of the treatment staff, as the case may be, shall fill in his or her own name and the date, and, if the person signs by mark, shall fill in the person's name, and shall then deliver the completed copy to the professional person in charge of the intensive treatment facility, or his or her designee, notifying him or her of the request. As soon as possible, the person notified shall inform the superior court for the county in which the facility is located of the request for release.

Any person who intentionally violates this section is guilty of a misdemeanor.

The form for a request for release shall be substantially as follows:

(Name of the facility) _____ day of _____ 19____

I, _____ (member of the treatment staff, or person delivering the copy of the certification notice), have today received a request for the release of _____ (name of patient) from the undersigned patient on his or her own behalf or from the undersigned person on behalf of the patient.

_____
Signature or mark of patient making request for release

_____
Signature or mark of person making request on behalf of patient

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2653, § 35, operative July 1, 1969; Stats.1969, c. 722, p. 1427, § 16.1, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1988, c. 1517, § 11.)

§ 5276. Jurisdiction and venue; counsel; order for evidentiary hearing; findings; release

Judicial review shall be in the superior court for the county in which the facility providing intensive treatment is located or in the county in which the 72–hour evaluation was conducted if the patient or a person acting in his or her behalf informs the professional staff of the evaluation facility (in writing) that judicial review will be sought. No patient shall be transferred from the county providing evaluation services to a different county for intensive treatment if the staff of the evaluation facility has been informed in writing that a judicial review will be sought, until the completion of the judicial review. The person requesting to be released shall be informed of his or her right to counsel by the member of the treatment staff and by the court; and, if he or she so elects, the court shall immediately appoint the public defender or other attorney to assist him or her in preparation of a petition for the writ of habeas corpus and, if he or she so elects, to represent him or her in the proceedings. The person shall pay the costs of the legal service if he or she is able.

Reasonable attempts shall be made by the mental health facility to notify family members or any other person designated by the patient, of the time and place of the judicial review, unless the patient requests that this information not be provided. The patient shall be advised by the facility that is treating the patient that he or she has the right to request that this information not be provided.

The court shall either release the person or order an evidentiary hearing to be held within two judicial days after the petition is filed. If the court finds, (a) that the person requesting release is not, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, (b) that he or she had not been advised of, or had accepted, voluntary treatment, or (c) that the facility providing intensive treatment is not equipped and staffed to provide treatment, or is not designated by the county to provide intensive treatment he or she shall be released immediately.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2654, § 37, operative July 1, 1969; Stats.1969, c. 722, p. 1428, § 17, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1970, c. 1627, p. 3443, § 16; Stats.1971, c. 776, p. 1527, § 2; Stats.1986, c. 872, § 4.)

§ 5276.1. Waiver of presence of physician, licensed psychologist, or other professional person; reception of certification of records

The person requesting release may, upon advice of counsel, waive the presence at the evidentiary hearing of the physician, licensed psychologist who meets the requirements of the first paragraph of Section 5251, or other professional person who certified the petition under Section 5251 and of the physician, or licensed psychologist who meets the requirements of the second paragraph of Section 5251, providing intensive treatment. In the event of such a waiver, such physician, licensed psychologist, or other professional person shall not be required to be present at the hearing if it is stipulated that the certification and records of such physicians, licensed psychologists, or other professional persons concerning the mental condition and treatment of the person regarding release will be received in evidence.

(Added by Stats.1971, c. 1162, p. 2221, § 2. Amended by Stats.1980, c. 1206, p. 4067, § 2.)

§ 5276.2. Certification review hearing upon withdrawal of request for judicial review; procedures

In the event that the person, or anyone acting on his or her behalf, withdraws the request for judicial review, a certification review hearing shall be held within four days of the withdrawal of the request, and the procedures in Sections 5255 to 5256.8, inclusive, shall be applicable.

(Added by Stats.1982, c. 1598, § 6.)

§ 5277. Findings as evidence

A finding under Section 5276 shall not be admissible in evidence in any civil or criminal proceeding without the consent of the person who was the subject of the finding.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1428, § 18, eff. Aug. 8, 1969, operative July 1, 1969.)

§ 5278. Exemption from liability

Individuals authorized under this part to detain a person for 72–hour treatment and evaluation pursuant to Article 1 (commencing with Section 5150) or Article 2 (commencing with Section 5200), or to certify a person for intensive treatment pursuant to Article 4 (commencing with Section 5250) or Article 4.5 (commencing with Section 5260) or Article 4.7 (commencing with Section 5270.10) or to file a petition for post–certification treatment for a person pursuant to Article 6 (commencing with Section 5300) shall not be held either criminally or civilly liable for exercising this authority in accordance with the law.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2654, § 39, operative July 1, 1969; Stats.1969, c. 722, p. 1428, § 19, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1988, c. 1517, § 12.)

Article 6 POSTCERTIFICATION PROCEDURES FOR IMMINENTLY DANGEROUS PERSONS

§ 5300. Additional confinement; grounds, duration; treatment, necessity, amenability

At the expiration of the 14–day period of intensive treatment, a person may be confined for further treatment pursuant to the provisions of this article for an additional period, not to exceed 180 days if one of the following exists:

(a) The person has attempted, inflicted, or made a serious threat of substantial physical harm upon the person of another after having been taken into custody, and while in custody, for evaluation and treatment, and who, as a result of mental disorder or mental defect, presents a demonstrated danger of inflicting substantial physical harm upon others.

(b) The person had attempted, or inflicted physical harm upon the person of another, that act having resulted in his or her being taken into custody and who presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm upon others.

(c) The person had made a serious threat of substantial physical harm upon the person of another within seven days of being taken into custody, that threat having at least in part resulted in his or her being taken into custody, and the person presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm upon others.

Any commitment to a licensed health facility under this article places an affirmative obligation on the facility to provide treatment for the underlying causes of the person's mental disorder.

Amenability to treatment is not required for a finding that any person is a person as described in subdivisions (a), (b), or (c). Treatment programs need only be made available to these persons. Treatment does not mean that the treatment be successful or potentially successful, and it does not mean that the person must recognize his or her problem and willingly participate in the treatment program.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2655, § 41, operative July 1, 1969; Stats.1982, c. 1563, § 1; Stats.1983, c. 754, § 2.)

§ 5300.5. Custody, defined; commitment, conviction unnecessary; demonstrated danger; determination

For purposes of this article:

(a) "Custody" shall be construed to mean involuntary detainment under the provisions of this part uninterrupted by any period of unconditioned release from a licensed health facility providing involuntary care and treatment.

(b) Conviction of a crime is not necessary for commitment under this article.

(c) Demonstrated danger may be based on assessment of present mental condition, which is based upon a consideration of past behavior of the person within six years prior to the time the person attempted, inflicted, or threatened physical harm upon another, and other relevant evidence.

(Added by Stats.1982, c. 1563, § 2. Amended by Stats.1983, c. 754, § 2.5.)

§ 5301. Petition; time; contents; form; affidavits

At any time during the 14–day intensive treatment period the professional person in charge of the licensed health facility, or his or her designee, may ask the public officer required by Section 5114 to present evidence at proceedings under this article to petition the superior court in the county in which the licensed health facility providing treatment is located for an order requiring such person to undergo an additional period of treatment on the grounds set forth in Section 5300. Such petition shall summarize the facts which support the contention that the person falls within the standard set forth in Section 5300. The petition shall be supported by affidavits describing in detail the behavior which indicates that the person falls within the standard set forth in Section 5300.

Copies of the petition for postcertification treatment and the affidavits in support thereof shall be served upon the person named in the petition on the same day as they are filed with the clerk of the superior court.

The petition shall be in the following form:

Petition for Postcertification Treatment of a Dangerous Person

I, _____, (the professional person in charge of the ____ intensive treatment facility) (the designee of _____ the professional person in charge of the _____, treatment facility) in which ____ has been under treatment pursuant to the certification by _____ and _____, hereby petition the court for an order requiring to undergo an additional period of treatment, not to exceed 180 days, pursuant to the provisions of Article 6 (commencing with Section 5300) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code. Such petition is based upon my allegation that (a) _____ has attempted, inflicted, or made a serious threat of substantial physical harm upon the person of another after having been taken into custody, and while in custody, for evaluation, and that, by reason of mental disorder or mental defect, presents a demonstrated danger of inflicting substantial physical harm upon others, or that (b) ____ had attempted or inflicted physical harm upon the person of another, that act having resulted in his or her being taken into custody, and that he or she presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm upon others, or that (c) _____ had made a serious threat of substantial physical harm upon the person of another within seven days of being taken into custody, that threat having at least in part resulted in his or her being taken into custody, and that he or she presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm upon others.

My allegation is based upon the following facts:

_____
_____
_____
_____
_____
_____
_____

This allegation is supported by the accompanying affidavits signed by _____.

Signed _____

The courts may receive the affidavits in evidence and may allow the affidavits to be read to the jury and the contents thereof considered in rendering a verdict, unless counsel for the person named in the petition subpoenas the treating professional person. If such treating professional person is subpoenaed to testify, the public officer, pursuant to Section 5114, shall be entitled to a continuance of the hearing or trial.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2656, § 42, operative July 1, 1969; Stats.1982, c. 1563, § 3; Stats.1983, c. 754, § 2.7.)

§ 5302. Attorney for patient; appointment; jury trial

At the time of filing a petition for postcertification treatment the court shall advise the person named in the petition of his right to be represented by an attorney and of his right to demand a jury trial. The court shall assist him in finding an attorney, or, if need be, appoint an attorney if the person is unable to obtain counsel. The court shall appoint the public defender or other attorney to represent the person named in the petition if the person is financially unable to provide his own attorney. The attorney shall advise the person of his rights in relation to the proceeding and shall represent him before the court.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2657, § 43.5, operative July 1, 1969; Stats.1969, c. 722, p. 1428, § 20, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1970, c. 1627, p. 3443, § 17.)

§ 5303. Time for hearing; due process; jury trial; continuation of treatment

The court shall conduct the proceedings on the petition for postcertification treatment within four judicial days of the filing of the petition and in accordance with constitutional guarantees of due process of law and the procedures required under Section 13 of Article 1 of the Constitution of the State of California.

If at the time of the hearing the person named in the petition requests a jury trial, such trial shall commence within 10 judicial days of the filing of the petition for postcertification treatment unless the person's attorney requests a continuance, which may be for a maximum of 10 additional judicial days. The decision of the jury must be unanimous in order to support the finding of facts required by Section 5304.

Until a final decision on the merits by the trial court the person named in the petition shall continue to be treated in the intensive treatment facility until released by order of the superior court having jurisdiction over the action, or unless the petition for postcertification treatment is withdrawn. If no decision has been made within 30 days after the filing of the petition, not including extensions of time requested by the person's attorney, the person shall be released.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2657, § 44, operative July 1, 1969.)

§ 5303.1. Hearing or jury trial; appointment of forensic psychiatrist or psychologist; testimony; waiver of presence of professional or designee and physician; reception of documents

For the purposes of any hearing or jury trial held pursuant to this article, the judge of the court in which such hearing or trial is held may

appoint a psychiatrist or psychologist with forensic skills. Such psychiatrist or psychologist shall personally examine the person named in the petition. Such a forensic psychiatrist or psychologist shall testify at the hearing or jury trial concerning the mental condition of the person named in the petition and the threat of substantial physical harm to other beings such person presents, and neither the professional person or his designee who petitioned for the additional period of treatment nor of the physicians providing intensive treatment shall be required, unless the person named in the petition chooses to subpoena such persons, to be present at the hearing or jury trial.

If a psychiatrist or psychologist with forensic skills is not appointed pursuant to this section the person named in the petition may, upon advice of counsel, waive the presence at the hearing or at the jury trial of the professional person or his designee who petitioned for the additional period of treatment and the physicians providing intensive treatment. In the event of such waiver, such professional person, his designee, or other physicians shall not be required to be present at the hearing if it is stipulated that the certification, supporting affidavit and records of such physicians concerning the mental condition of the person named in the petition will be received in evidence.

(Added by Stats.1971, c. 1162, p. 2221, § 3. Amended by Stats.1975, c. 960, p. 2244, § 5.)

§ 5304. Remand for additional treatment; duration; new petition

(a) The court shall remand a person named in the petition for postcertification treatment to the custody of the State Department of Mental Health or to a licensed health facility designated by the county of residence of that person for a further period of intensive treatment not to exceed 180 days from the date of court judgment, if the court or jury finds that the person named in the petition for postcertification treatment has done any of the following:

(1) Attempted, inflicted, or made a serious threat of substantial physical harm upon the person of another after having been taken into custody, and while in custody, for evaluation and treatment, and who, as a result of mental disorder or mental defect, presents a demonstrated danger of inflicting substantial physical harm upon others.

(2) Attempted or inflicted physical harm upon the person of another, that act having resulted in his or her being taken into custody, and who, as a result of mental disorder or mental defect, presents a demonstrated danger of inflicting substantial physical harm upon others.

(3) Expressed a serious threat of substantial physical harm upon the person of another within seven days of being taken into custody, that threat having at least in part resulted in his or her being taken into custody, and who presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm upon others.

(b) The person shall be released from involuntary treatment at the expiration of 180 days unless the public officer, pursuant to Section 5114, files a new petition for postcertification treatment on the grounds that he or she has attempted, inflicted, or made a serious threat of substantial physical harm upon another during his or her period of postcertification treatment, and he or she is a person who by reason of mental disorder or mental defect, presents a demonstrated danger of inflicting substantial physical harm upon others. The new petition for postcertification treatment shall be filed in the superior court in which the original petition for postcertification was filed.

(c) The county from which the person was remanded shall bear any transportation costs incurred pursuant to this section.

(Added by Stats.1983, c. 754, § 4.)

§ 5305. Outpatient status; qualifications; notice of outpatient treatment plan; effective date of plan; hearing; outpatient supervision; reports

(a) Any person committed pursuant to Section 5300 may be placed on outpatient status if all of the following conditions are satisfied:

(1) In the evaluation of the superintendent or professional person in charge of the licensed health facility, the person named in the petition will no longer be a danger to the health and safety of others while on outpatient status and will benefit from outpatient status.

(2) The county mental health director advises the court that the person named in the petition will benefit from outpatient status and identifies an appropriate program of supervision and treatment.

(b) After actual notice to the public officer, pursuant to Section 5114, and to counsel of the person named in the petition, to the court and to the county mental health director, the plan for outpatient treatment shall become effective within five judicial days unless a court hearing on that action is requested by any of the aforementioned parties, in which case the release on outpatient status shall not take effect until approved by the court after a hearing. This hearing shall be held within five judicial days of the actual notice required by this subdivision.

(c) The county mental health director shall be the outpatient supervisor of persons placed on outpatient status under provisions of this section. The county mental health director may delegate such outpatient supervision responsibility to a designee.

(d) The outpatient treatment supervisor shall, where the person is placed on outpatient status at least three months, submit at 90–day intervals to the court, the public officer, pursuant to Section 5114, and counsel of the person named in the petition and to the supervisor or professional person in charge of the licensed health facility, where appropriate, a report setting forth the status and progress of the person named in the petition. Notwithstanding the length of the outpatient status, a final report shall be submitted by the outpatient treatment supervisor at the conclusion of the 180–day commitment setting forth the status and progress of the person.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2658, § 45.5, operative July 1, 1969; Stats.1982, c. 1563, § 5.)

§ 5306. Exemption from liability

(a) Notwithstanding Section 5113, if the provisions of Section 5309 have been met, the superintendent, the professional person in charge of the hospital providing 90–day involuntary treatment, the medical director of the facility or his or her designee described in subdivision (a) of Section 5309, and the psychiatrist directly responsible for the person's treatment shall not be held civilly or criminally liable for any action by a person released before the end of a 90–day period pursuant to this article.

(b) The superintendent, the professional person in charge of the hospital providing 90–day involuntary treatment, the medical director of the facility or his or her designee described in subdivision (a) of Section 5309, and the psychiatrist directly responsible for the person's treatment shall not be held civilly or criminally liable for any action by a person released at the end of a 90–day period pursuant to this article.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2659, § 46, operative July 1, 1969; Stats.1985, c. 1288, § 11, eff. Sept. 30, 1985.)

§ 5306.5. Request for outpatient status revocation; copy of request; hearing; order for confinement and revocation

If at any time during the outpatient period, the outpatient treatment supervisor is of the opinion that the person receiving treatment requires extended inpatient treatment or refuses to accept further outpatient treatment and supervision, the county mental health director shall notify the superior court in either the county which approved outpatient status or in the county where outpatient treatment

is being provided of such opinion by means of a written request for revocation of outpatient status. The county mental health director shall furnish a copy of this request to the counsel of the person named in the request for revocation and to the public officer, pursuant to Section 5114, in both counties if the request is made in the county of treatment, rather than the county of commitment.

Within 15 judicial days, the court where the request was filed shall hold a hearing and shall either approve or disapprove the request for revocation of outpatient status. If the court approves the request for revocation, the court shall order that the person be confined in a state hospital or other treatment facility approved by the county mental health director. The court shall transmit a copy of its order to the county mental health director or a designee and to the Director of Mental Health. Where the county of treatment and the county of commitment differ and revocation occurs in the county of treatment, the court shall enter the name of the committing county and its case number on the order of revocation and shall send a copy of the order to the committing court and the public officer, pursuant to Section 5114, and counsel of the person named in the request for revocation in the county of commitment.

(Added by Stats.1982, c. 1563, § 6.)

§ 5307. Petition for hearing to determine whether outpatient should be continued on such status; notice; body attachment order of confinement

If at any time during the outpatient period the public officer, pursuant to Section 5114, is of the opinion that the person is a danger to the health and safety of others while on outpatient status, the public officer, pursuant to Section 5114, may petition the court for a hearing to determine whether the person shall be continued on outpatient status. Upon receipt of the petition, the court shall calendar the case for further proceedings within 15 judicial days and the clerk shall notify the person, the county mental health director, and the attorney of record for the person of the hearing date. Upon failure of the person to appear as noticed, if a proper affidavit of service and advisement has been filed with the court, the court may issue a body attachment for such person. If, after a hearing in court the judge determines that the person is a danger to the health and safety of others, the court shall order that the person be confined in a state hospital or other treatment facility which has been approved by the county mental health director.

(Added by Stats.1982, c. 1563, § 7.)

§ 5308. Confinement of outpatient pending proceeding for revocation of outpatient status; taking into custody and transporting outpatient; notice; review; subsequent release

Upon the filing of a request for revocation of outpatient status under Section 5306.5 or 5307 and pending the court's decision on revocation, the person subject to revocation may be confined in a state hospital or other treatment facility by the county mental health director when it is the opinion of that director that the person will now be a danger to self or to another while on outpatient status and that to delay hospitalization until the revocation hearing would pose a demonstrated danger of harm to the person or to another. Upon the request of the county mental health director or a designee, a peace officer shall take, or cause to be taken, the person into custody and transport the person to a treatment facility for hospitalization under this section. The county mental health director shall notify the court in writing of the admission of the person to inpatient status and of the factual basis for the opinion that such immediate return to inpatient treatment was necessary. The court shall supply a copy of these documents to the public officer, pursuant to Section 5114, and counsel of the person subject to revocation.

A person hospitalized under this section shall have the right to judicial review of the detention in the manner prescribed in Article 5 (commencing with Section 5275) of Chapter 2 and to an explanation of rights in the manner prescribed in Section 5252.1.

Nothing in this section shall prevent hospitalization pursuant to the provisions of Section 5150, 5250, 5350, or 5353.

A person whose confinement in a treatment facility under Section 5306.5 or 5307 is approved by the court shall not be released again to outpatient status unless court approval is obtained under Section 5305.

(Added by Stats.1982, c. 1563, § 8.)

§ 5309. Release prior to expiration of commitment period; grounds; plan for unconditional release, notice, effective date, approval after hearing

(a) Nothing in this article shall prohibit the superintendent or professional person in charge of the hospital in which the person is being involuntarily treated from releasing him or her from treatment prior to the expiration of the commitment period when, the psychiatrist directly responsible for the person's treatment believes, as a result of his or her personal observations, that the person being involuntarily treated no longer constitutes a demonstrated danger of substantial physical harm to others. If any other professional person who is authorized to release the person, believes the person should be released prior to the expiration of the commitment period, and the psychiatrist directly responsible for the person's treatment objects, the matter shall be referred to the medical director of the facility for the final decision. However, if the medical director is not a psychiatrist, he or she shall appoint a designee who is a psychiatrist. If the matter is referred, the person shall be released prior to the expiration of the commitment period only if the psychiatrist making the final decision believes, as a result of his or her personal observations, that the person being involuntarily treated no longer constitutes a demonstrated danger of substantial physical harm to others.

(b) After actual notice to the public officer, pursuant to Section 5114, and to counsel of the person named in the petition, to the court, and to the county mental health director, the plan for unconditional release shall become effective within five judicial days unless a court hearing on that action is requested by any of the aforementioned parties, in which case the unconditional release shall not take effect until approved by the court after a hearing. This hearing shall be held within five judicial days of the actual notice required by this subdivision.

(Added by Stats.1982, c. 1563, § 9. Amended by Stats.1985, c. 1288, § 12, eff. Sept. 30, 1985.)

Article 7 LEGAL AND CIVIL RIGHTS OF PERSONS INVOLUNTARILY DETAINED

§ 5325. List of rights; posting; waiver

Each person involuntarily detained for evaluation or treatment under provisions of this part, each person admitted as a voluntary patient for psychiatric evaluation or treatment to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered, and each mentally retarded person committed to a state hospital pursuant to Article 5 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 shall have the following rights, a list of which shall be prominently posted in the predominant languages of the community and explained in a language or modality accessible to the patient in all facilities providing such services and otherwise brought to his or her attention by such additional means as the Director of Mental Health may designate by regulation:

(a) To wear his or her own clothes; to keep and use his or her own personal possessions including his or her toilet articles; and to keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases.

(b) To have access to individual storage space for his or her private use.

(c) To see visitors each day.

(d) To have reasonable access to telephones, both to make and receive confidential calls or to have such calls made for them.

(e) To have ready access to letterwriting materials, including stamps, and to mail and receive unopened correspondence.

(f) To refuse convulsive treatment including, but not limited to, any electroconvulsive treatment, any treatment of the mental condition which depends on the induction of a convulsion by any means, and insulin coma treatment.

(g) To refuse psychosurgery. Psychosurgery is defined as those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery and all other forms of brain surgery if the surgery is performed for the purpose of any of the following:

(1) Modification or control of thoughts, feelings, actions, or behavior rather than the treatment of a known and diagnosed physical disease of the brain.

(2) Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, actions, or behavior.

(3) Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions, or behavior.

Psychosurgery does not include prefrontal sonic treatment wherein there is no destruction of brain tissue. The Director of Mental Health shall promulgate appropriate regulations to assure adequate protection of patients' rights in such treatment.

(h) To see and receive the services of a patient advocate who has no direct or indirect clinical or administrative responsibility for the person receiving mental health services.

(i) Other rights, as specified by regulation.

Each patient shall also be given notification in a language or modality accessible to the patient of other constitutional and statutory rights which are found by the State Department of Mental Health to be frequently misunderstood, ignored, or denied.

Upon admission to a facility each patient shall immediately be given a copy of a State Department of Mental Health prepared patients' rights handbook.

The State Department of Mental Health shall prepare and provide the forms specified in this section and in Section 5157.

The rights specified in this section may not be waived by the person's parent, guardian, or conservator.

(Added by Stats.1972, c. 1055, p. 1940, § 3, operative July 1, 1973. Amended by Stats.1974, c. 1534, p. 3459, § 1; Stats.1976, c. 1109, p. 4992, § 1.5; Stats.1977, c. 1252, p. 4570, § 561, operative July 1, 1978; Stats.1977, c. 1021, p. 3060, § 2; Stats.1978, c. 429, p. 1454, § 206, eff. July 17, 1978, operative July 1, 1978; Stats.1981, c. 841, p. 3231, § 2.)

§ 5325.1. Same rights and responsibilities guaranteed others; discrimination by programs or activities receiving public funds; additional rights

Persons with mental illness have the same legal rights and responsibilities guaranteed all other persons by the Federal Constitution and laws and the Constitution and laws of the State of California, unless specifically limited by federal or state law or regulations. No otherwise qualified person by reason of having been involuntarily detained for evaluation or treatment under provisions of this part or having been admitted as a voluntary patient to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, which receives public funds.

It is the intent of the legislature that persons with mental illness shall have rights including, but not limited to, the following:

(a) A right to treatment services which promote the potential of the person to function independently. Treatment should be provided in ways that are least restrictive of the personal liberty of the individual.

(b) A right to dignity, privacy, and humane care.

(c) A right to be free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse, or neglect. Medication shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the treatment program.

(d) A right to prompt medical care and treatment.

(e) A right to religious freedom and practice.

(f) A right to participate in appropriate programs of publicly supported education.

(g) A right to social interaction and participation in community activities.

(h) A right to physical exercise and recreational opportunities.

(i) A right to be free from hazardous procedures.

(Added by Stats.1978, c. 1320, p. 4319, § 1.)

§ 5325.2. Persons subject to detention pursuant to §§ 5150, 5250, 5260, 5270.15; right to refuse antipsychotic medication

Any person who is subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15 shall have the right to refuse treatment with antipsychotic medication subject to provisions set forth in this chapter.

(Added by Stats.1991, c. 681 (S.B.665), § 2.)

§ 5326. Denial of rights; cause; record

The professional person in charge of the facility or his or her designee may, for good cause, deny a person any of the rights under Section 5325, except under subdivisions (g) and (h) and the rights under subdivision (f) may be denied only under the conditions specified in Section 5326.7. To ensure that these rights are denied only for good cause, the Director of Mental Health shall adopt regulations specifying the conditions under which they may be denied. Denial of a person's rights shall in all cases be entered into the person's treatment record.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3341, § 376, operative July 1, 1973; Stats.1973, c. 959, p. 1804, § 1; Stats.1974, c. 1534, p. 3460, § 2; Stats.1976, c. 1109, p. 4993, § 2; Stats.1977, c. 1252, p. 4571, § 562, operative July 1, 1978; Stats.1981, c. 841, p. 3232, § 3.)

§ 5326.1. Reports; number of persons denied rights; availability of information

Quarterly, each local mental health director shall furnish to the Director of Mental Health, the facility reports of the number of persons whose rights were denied and the right or rights which were denied. The content of the reports from facilities shall enable the local mental health director and Director of Mental Health to identify individual treatment records, if necessary, for further analysis and investigation. These quarterly reports, except for the identity of the person whose rights are denied, shall be available, upon request, to Members of the State Legislature, or a member of a county board of supervisors.

Notwithstanding any other provision of law, information pertaining to denial of rights contained in the person's treatment record shall be made available, on request, to the person, his or her attorney, his or her conservator or guardian, the local mental health director, or his or her designee, or the Patient's Rights Office of the State Department of Mental Health. The information may include consent forms, required documentation for convulsive treatment, documentation regarding the use of restraints and seclusion, physician's orders, nursing notes, and involuntary detention and conservatorship papers. The information, except for the identity of the person whose rights are denied, shall be made available to the Members of the State Legislature or a member of a county board of supervisors.

(Added by Stats.1976, c. 1109, p. 4993, § 2.5. Amended by Stats.1977, c. 1252, p. 4571, § 563, operative July 1, 1978; Stats.1981, c. 841, p. 3233, § 4; Stats.1983, c. 101, § 169.)

§ 5326.15. Reports; persons receiving treatment; categories

(a) Quarterly, any doctor or facility which administers convulsive

treatments or psychosurgery, shall report to the local mental health director, who shall transmit a copy to the Director of Mental Health, the number of persons who received such treatments wherever administered, in each of the following categories:

(1) Involuntary patients who gave informed consent.

(2) Involuntary patients who were deemed incapable of giving informed consent and received convulsive treatment against their will.

(3) Voluntary patients who gave informed consent.

(4) Voluntary patients deemed incapable of giving consent.

(b) Quarterly, the Director of Mental Health shall forward to the Medical Board of California any records or information received from such reports indicating violation of the law, and the regulations which have been adopted thereto.

(Added by Stats.1976, c. 1109, p. 4994, § 3. Amended by Stats.1977, c. 1252, p. 4572, § 564, operative July 1, 1978; Stats.1989, c. 886, § 102; Stats.1992, c. 713 (A.B.3564), § 41, eff. Sept. 15, 1992.)

§ 5326.2. Voluntary informed consent; information constituting

To constitute voluntary informed consent, the following information shall be given to the patient in a clear and explicit manner:

(a) The reason for treatment, that is, the nature and seriousness of the patient's illness, disorder or defect.

(b) The nature of the procedures to be used in the proposed treatment, including its probable frequency and duration.

(c) The probable degree and duration (temporary or permanent) of improvement or remission, expected with or without such treatment.

(d) The nature, degree, duration, and the probability of the side effects and significant risks, commonly known by the medical profession, of such treatment, including its adjuvants, especially noting the degree and duration of memory loss (including its irreversibility) and how and to what extent they may be controlled, if at all.

(e) That there exists a division of opinion as to the efficacy of the proposed treatment, why and how it works and its commonly known risks and side effects.

(f) The reasonable alternative treatments, and why the physician is recommending this particular treatment.

(g) That the patient has the right to accept or refuse the proposed treatment, and that if he or she consents, has the right to revoke his or her consent for any reason, at any time prior to or between treatments.

(Added by Stats.1976, c. 1109, p. 4994, § 3.5.)

§ 5326.3. Written consent form; contents

The State Department of Mental Health shall promulgate a standard written consent form, setting forth clearly and in detail the matters listed in Section 5326.2, and such further information with respect to each item as deemed generally appropriate to all patients.

The treating physician shall utilize the standard written consent form and in writing supplement it with those details which pertain to the particular patient being treated.

(Added by Stats.1974, c. 1534, p. 3460, § 3. Amended by Stats.1976, c. 1109, p. 4995, § 4; Stats.1977, c. 1252, p. 4572, § 565, operative July 1, 1978.)

§ 5326.4. Supplemented written consent form; oral explanation by physician; entry on record

The treating physician shall then present to the patient the supplemented form specified under Section 5326.3 and orally, clearly, and in detail explain all of the above information to the patient. The treating physician shall then administer the execution by the patient of the total supplemented written consent form, which shall be dated and witnessed.

The fact of the execution of such written consent form and of the oral explanation shall be entered into the patient's treatment record, as shall be a copy of the consent form itself. Should entry of such latter information into the patient's treatment record be deemed by any court an unlawful invasion of privacy, then such consent form shall be maintained in a confidential manner and place.

The consent form shall be available to the person, and to his or her attorney, guardian, and conservator and, if the patient consents, to a responsible relative of the patient's choosing.

(Added by Stats.1974, c. 1534, p. 3462, § 4. Amended by Stats.1976, c. 1109, p. 4995, § 5.)

§ 5326.5. Written informed consent; definition; when given

(a) For purposes of this chapter, "written informed consent" means that a person knowingly and intelligently, without duress or coercion, clearly and explicitly manifests consent to the proposed therapy to the treating physician and in writing on the standard consent form prescribed in Section 5326.4.

(b) The physician may urge the proposed treatment as the best one, but may not use, in an effort to gain consent, any reward or threat, express or implied, nor any other form of inducement or coercion, including, but not limited to, placing the patient in a more restricted setting, transfer of the patient to another facility, or loss of the patient's hospital privileges. Nothing in this subdivision shall be construed as in conflict with Section 5326.2. No one shall be denied any benefits for refusing treatment.

(c) A person confined shall be deemed incapable of written informed consent if such person cannot understand, or knowingly and intelligently act upon, the information specified in Section 5326.2.

(d) A person confined shall not be deemed incapable of refusal solely by virtue of being diagnosed as a mentally ill, disordered, abnormal, or mentally defective person.

(e) Written informed consent shall be given only after 24 hours have elapsed from the time the information in Section 5326.2 has been given.

(Added by Stats.1974, c. 1534, p. 3463, § 5. Amended by Stats.1976, c. 1109, p. 4995, § 6.)

§ 5326.55. Personal involvement in treatment; committee members; review of cases

Persons who serve on review committees shall not otherwise be personally involved in the treatment of the patient whose case they are reviewing.

(Added by Stats.1976, c. 1109, p. 4996, § 6.5.)

§ 5326.6. Psychosurgery; conditions for performing; responsible relative; refusal to consent

Psychosurgery, wherever administered, may be performed only if:

(a) The patient gives written informed consent to the psychosurgery.

(b) A responsible relative of the person's choosing and with the person's consent, and the guardian or conservator if there is one, has read the standard consent form as defined in Section 5326.4 and has been given by the treating physician the information required in Section 5326.2. Should the person desire not to inform a relative or should such chosen relative be unavailable this requirement is dispensed with.

(c) The attending physician gives adequate documentation entered in the patient's treatment record of the reasons for the procedure, that all other appropriate treatment modalities have been exhausted and that this mode of treatment is definitely indicated and is the least drastic alternative available for the treatment of the patient at the time. Such statement in the treatment record shall be signed by the attending and treatment physician or physicians.

(d) Three physicians, one appointed by the facility and two appointed by the local mental health director, two of whom shall be either board–certified or eligible psychiatrists or board–certified or eligible neurosurgeons, have personally examined the patient and unanimously agree with the attending physicians' determinations pursuant to subdivision (c) and agree that the patient has the capacity to give informed consent. Such agreement shall be documented in the patient's treatment record and signed by each such physician.

Psychosurgery shall in no case be performed for at least 72 hours

following the patient's written consent. Under no circumstances shall psychosurgery be performed on a minor.

As used in this section and Sections 5326.4 and 5326.7 "responsible relative" includes the spouse, parent, adult child, or adult brother or sister of the person.

The giving of consent to any of the treatments covered by this chapter may not be construed as a waiver of the right to refuse treatment at a future time. Consent may be withdrawn at any time. Such withdrawal of consent may be either oral or written and shall be given effect immediately.

Refusal of consent to undergo a psychosurgery shall be entered in the patient's treatment record.

(Added by Stats.1976, c. 1109, p. 4996, § 7.)

§ 5326.7. Convulsive treatment; involuntary patients; conditions for administering

Subject to the provisions of subdivision (f) of Section 5325, convulsive treatment may be administered to an involuntary patient, including anyone under guardianship or conservatorship, only if:

(a) The attending or treatment physician enters adequate documentation in the patient's treatment record of the reasons for the procedure, that all reasonable treatment modalities have been carefully considered, and that the treatment is definitely indicated and is the least drastic alternative available for this patient at this time. Such statement in the treatment record shall be signed by the attending and treatment physician or physicians.

(b) A review of the patient's treatment record is conducted by a committee of two physicians, at least one of whom shall have personally examined the patient. One physician shall be appointed by the facility and one shall be appointed by the local mental health director. Both shall be either board–certified or board–eligible psychiatrists or board–certified or board–eligible neurologists. This review committee must unanimously agree with the treatment physician's determinations pursuant to subdivision (a). Such agreement shall be documented in the patient's treatment record and signed by both physicians.

(c) A responsible relative of the person's choosing and the person's guardian or conservator, if there is one, have been given the oral explanation by the attending physician as required by Section 5326.2. Should the person desire not to inform a relative or should such chosen relative be unavailable, this requirement is dispensed with.

(d) The patient gives written informed consent as defined in Section 5326.5 to the convulsive treatment. Such consent shall be for a specified maximum number of treatments over a specified maximum period of time not to exceed 30 days, and shall be revocable at any time before or between treatments. Such withdrawal of consent may be either oral or written and shall be given effect immediately. Additional treatments in number or time, not to exceed 30 days, shall require a renewed written informed consent.

(e) The patient's attorney, or if none, a public defender appointed by the court, agrees as to the patient's capacity or incapacity to give written informed consent and that the patient who has capacity has given written informed consent.

(f) If either the attending physician or the attorney believes that the patient does not have the capacity to give a written informed consent, then a petition shall be filed in superior court to determine the patient's capacity to give written informed consent. The court shall hold an evidentiary hearing after giving appropriate notice to the patient, and within three judicial days after the petition is filed. At such hearing the patient shall be present and represented by legal counsel. If the court deems the above–mentioned attorney to have a conflict of interest, such attorney shall not represent the patient in this proceeding.

(g) If the court determines that the patient does not have the capacity to give written informed consent, then treatment may be performed upon gaining the written informed consent as defined in Sections 5326.2 and 5326.5 from the responsible relative or the guardian or the conservator of the patient.

(h) At any time during the course of treatment of a person who has been deemed incompetent, that person shall have the right to claim regained competency. Should he do so, the person's competency must be reevaluated according to subdivisions (e), (f), and (g).

(Added by Stats.1976, c. 1109, p. 4997, § 8.)

§ 5326.75. Convulsive treatment; other than involuntary patients; condition to administer

Convulsive treatment for all other patients including but not limited to those voluntarily admitted to a facility, or receiving the treatment in a physician's office, clinic or private home, may be administered only if:

(a) The requirements of subdivisions (a), (c), and (d) of Section 5326.7 are met.

(b) A board–certified or board–eligible psychiatrist or a board–certified or board–eligible neurologist other than the patient's attending or treating physician has examined the patient and verifies that the patient has the capacity to give and has given written informed consent. Such verification shall be documented in the patient's treatment record and signed by the treating physician.

(c) If there is not the verification required by subdivision (b) of this section or if the patient has not the capacity to give informed consent, then subdivisions (b), (e), (f), (g), and (h) of Section 5326.7 shall also be met.

(Added by Stats.1976, c. 1109, p. 4998, § 8.5.)

§ 5326.8. Convulsive treatment; minors; conditions to perform

Under no circumstances shall convulsive treatment be performed on a minor under 12 years of age. Persons 16 and 17 years of age shall personally have and exercise the rights under this article.

Persons 12 years of age and over, and under 16, may be administered convulsive treatment only if all the other provisions of this law are complied with and in addition:

(a) It is an emergency situation and convulsive treatment is deemed a lifesaving treatment.

(b) This fact and the need for and appropriateness of the treatment are unanimously certified to by a review board of three board–eligible or board–certified child psychiatrists appointed by the local mental health director.

(c) It is otherwise performed in full compliance with regulations promulgated by the Director of Mental Health under Section 5326.95.

(d) It is thoroughly documented and reported immediately to the Director of Mental Health.

(Added by Stats.1976, c. 1109, p. 4998, § 9. Amended by Stats.1977, c. 1252, p. 4572, § 566, operative July 1, 1978.)

§ 5326.85. Refusal of convulsive treatment; entry on record

No convulsive treatment shall be performed if the patient, whether admitted to the facility as a voluntary or involuntary patient, is deemed to be able to give informed consent and refuses to do so. The physician shall indicate in the treatment record that the treatment was refused despite the physician's advice and that he has explained to the patient the patient's responsibility for any untoward consequences of his refusal.

(Added by Stats.1976, c. 1109, p. 4999, § 9.5.)

§ 5326.9. Violations; investigation; notice; authorized actions; intentional violation by physician of §§ 5326.2 to 5326.8; knowing violations of §§ 5325, 5325.1

(a) Any alleged or suspected violation of the rights described in Chapter 2 (commencing with Section 5150) shall be investigated by the local director of mental health, or his or her designee. Violations of Sections 5326.2 to 5326.8, inclusive, shall also be investigated by the Director of Mental Health, or his or her designee. If it is determined by the local director of mental health or Director of Mental Health that a right has been violated, a formal notice of violation shall be issued.

(b) Either the local director of mental health or the Director of Mental Health upon issuing a notice of violation may take any or all of the following action:

(1) Assign a specified time period during which the violation shall be corrected.

(2) Referral to the Medical Board of California or other professional licensing agency. Such board shall investigate further, if warranted, and shall subject the individual practitioner to any penalty the board finds necessary and is authorized to impose.

(3) Revoke a facility's designation and authorization under Section 5404 to evaluate and treat persons detained involuntarily.

(4) Refer any violation of law to a local district attorney or the Attorney General for prosecution in any court with jurisdiction.

(c) Any physician who intentionally violates Sections 5326.2 to 5326.8, inclusive, shall be subject to a civil penalty of not more than five thousand dollars ($5,000) for each violation. Such penalty may be assessed and collected in a civil action brought by the Attorney General in a superior court. Such intentional violation shall be grounds for revocation of license.

(d) Any person or facility found to have knowingly violated the provisions of the first paragraph of Section 5325.1 or to have denied without good cause any of the rights specified in Section 5325 shall pay a civil penalty, as determined by the court, of fifty dollars ($50) per day during the time in which the violation is not corrected, commencing on the day on which a notice of violation was issued, not to exceed one thousand dollars ($1,000), for each and every violation, except that any liability under this provision shall be offset by an amount equal to a fine or penalty imposed for the same violation under the provisions of Sections 1423 to 1425, inclusive, or 1428 of the Health and Safety Code. These penalties shall be deposited in the general fund of the county in which the violation occurred. The local district attorney or the Attorney General shall enforce this section in any court with jurisdiction. Where the State Department of Health Services, under the provisions of Sections 1423 to 1425, inclusive, of the Health and Safety Code, determines that no violation has occurred, the provisions of paragraph (4) of subdivision (b) shall not apply.

(e) The remedies provided by this subdivision shall be in addition to and not in substitution for any other remedies which an individual may have under law.

(Added by Stats.1976, c. 1109, p. 4999, § 10. Amended by Stats.1977, c. 1252, p. 4573, § 567, operative July 1, 1978; Stats.1978, c. 429, p. 1455, § 207, eff. July 17, 1978, operative July 1, 1978; Stats.1981, c. 841, p. 3233, § 5; Stats.1989, c. 886, § 103.)

§ 5326.91. Committee reviewal of convulsive treatments; records; immunity of members

In any facility in which convulsive treatment is performed on a person whether admitted to the facility as an involuntary or voluntary patient, the facility will designate a qualified committee to review all such treatments and to verify the appropriateness and need for such treatment. The local mental health director shall establish a postaudit review committee for convulsive treatments administered anywhere other than in any facility as defined in Section 1250 of the Health and Safety Code in which psychiatric evaluation or treatment is offered. Records of these committees will be subject to availability in the same manner as are the records of other hospital utilization and audit committees and to such other regulations as are promulgated by the Director of Mental Health. Persons serving on such review committees will enjoy the same immunities as other persons serving on utilization, peer review, and audit committees of health care facilities.

(Added by Stats.1976, c. 1109, p. 4999, § 11. Amended by Stats.1977, c. 1252, p. 4573, § 568, operative July 1, 1978.)

§ 5326.95. Regulations by director; standards for excessive use of convulsive treatment

The Director of Mental Health shall adopt regulations to carry out the provisions of this chapter, including standards defining excessive use of convulsive treatment which shall be developed in consultation with the conference of local mental health directors.

(Added by Stats.1976, c. 1109, p. 5000, § 12. Amended by Stats.1977, c. 1252, p. 4574, § 569, operative July 1, 1978.)

§ 5327. Rights of involuntarily detained persons

Every person involuntarily detained under provisions of this part or under certification for intensive treatment or postcertification treatment in any public or private mental institution or hospital, including a conservatee placed in any medical, psychiatric or nursing facility, shall be entitled to all rights set forth in this part and shall retain all rights not specifically denied him under this part.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5328. Confidential information and records; disclosure; consent

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, social worker with a master's degree in social work, or licensed marriage and family therapist, 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, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, 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. Nothing in this subdivision shall be construed to authorize a licensed marriage and family therapist to provide services or to be in charge of a patient's care beyond his or her lawful scope of practice.

(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, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, 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.

(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:

_____

Date

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 Senate Committee on Rules or the Assembly Committee on 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, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, 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 18951. 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 18950) 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 Section 4070.

(*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 125135 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 125000 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)(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.

(t)(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.

(u) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to Section 15610.55, 15753.5, or 15761. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused elder or dependent adult pursuant to Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(v) 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.

(w) This section shall not be limited by Section 5150.05 or 5332.

(x)(1) When an employee is served with a notice of adverse action, as defined in Section 19570 of the Government Code, the following information and records may be released:

(A) All information and records that the appointing authority relied upon in issuing the notice of adverse action.

(B) All other information and records that are relevant to the adverse action, or that would constitute relevant evidence as defined in Section 210 of the Evidence Code.

(C) The information described in subparagraphs (A) and (B) may be released only if both of the following conditions are met:

(i) The appointing authority has provided written notice to the consumer and the consumer's legal representative or, if the consumer has no legal representative or if the legal representative is a state agency, to the clients' rights advocate, and the consumer, the consumer's legal representative, or the clients' rights advocate has not objected in writing to the appointing authority within five business days of receipt of the notice, or the appointing authority, upon review of the objection has determined that the circumstances on which the adverse action is based are egregious or threaten the health, safety, or life of the consumer or other consumers and without the information the adverse action could not be taken.

(ii) The appointing authority, the person against whom the adverse action has been taken, and the person's representative, if any, have entered into a stipulation that does all of the following:

(I) Prohibits the parties from disclosing or using the information or records for any purpose other than the proceedings for which the information or records were requested or provided.

(II) Requires the employee and the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final except for the actual records and documents or copies thereof that are no longer in the possession of the employee or the employee's legal representative because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(III) Requires the parties to submit the stipulation to the administrative tribunal with jurisdiction over the adverse action at the earliest possible opportunity.

(2) For the purposes of this subdivision, the State Personnel Board may, prior to any appeal from adverse action being filed with it, issue a protective order, upon application by the appointing authority, for the limited purpose of prohibiting the parties from disclosing or using information or records for any purpose other than the proceeding for which the information or records were requested or provided, and to require the employee or the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final, except for the actual records and documents or copies thereof that are no longer in the possession of the employee or the employee's legal representatives because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(3) Individual identifiers, including, but not limited to, names, social security numbers, and hospital numbers, that are not necessary for the prosecution or defense of the adverse action, shall not be disclosed.

(4) All records, documents, or other materials containing confidential information protected by this section that has been submitted or otherwise disclosed to the administrative agency or other person as a component of an appeal from an adverse action shall, upon proper motion by the appointing authority to the administrative tribunal, be placed under administrative seal and shall not, thereafter, be subject to disclosure to any person or entity except upon the issuance of an order of a court of competent jurisdiction.

(5) For purposes of this subdivision, an adverse action becomes final when the employee fails to answer within the time specified in Section 19575 of the Government Code, or, after filing an answer, withdraws the appeal, or, upon exhaustion of the administrative appeal or of the judicial review remedies as otherwise provided by law.

(Added by Stats.1972, c. 1058, p. 1960, § 2, operative July 1, 1973. Amended by Stats.1974, c. 486, p. 1120, § 2, eff. July 11, 1974; Stats.1975, c. 1258, p. 3300, § 6; Stats.1977, c. 1252, p. 4574, § 570, operative July 1, 1978; Stats.1978, c. 69, p. 190, § 5; Stats.1978, c. 432, p. 1502, § 12, eff. July 17, 1978, operative July 1, 1978; Stats.1978, c. 1345, p. 4397, § 1; Stats.1979, c. 373, p. 1396, § 364; Stats.1979, c. 244, p. 529, § 1; Stats.1980, c. 676, p. 2036, § 332; Stats.1981, c. 841, p. 3234, § 6; Stats.1982, c. 234, § 6, eff. June 2, 1982; Stats.1982, c. 1141, § 7; Stats.1982, c. 1415, § 1, eff. Sept. 27, 1982; Stats.1983, c. 755, § 3; Stats.1983, c. 1174, § 1.5; Stats.1985, c. 1121, § 3; Stats.1985, c. 1194, § 1; Stats.1985, c. 1324, § 1.7; Stats.1991, c. 534 (S.B.1088), § 6; Stats.1996, c. 1023 (S.B.1497), § 464, eff. Sept. 29, 1996; Stats.1996, c. 111 (S.B.2082), § 2; Stats.1998, c. 148 (A.B.302), § 1; Stats.2001, c. 37 (A.B.213), § 1; Stats.2001, c. 506 (A.B.1424), § 8.5; Stats.2002, c. 552 (A.B.2735), § 1; Stats.2004, c. 406 (S.B.1819), § 2.)

§ 5328.01. Confidential information and records; disclosure to law enforcement agencies; consent; court orders

Notwithstanding Section 5328, all information and records made confidential under the first paragraph of Section 5328 shall also be disclosed to governmental law enforcement agencies investigating evidence of a crime where the records relate to a patient who is confined or has been confined as a mentally disordered sex offender or pursuant to Section 1026 or 1368 of the Penal Code and the records are in the possession or under the control of any state hospital serving the mentally disabled, as follows:

(a) In accordance with the written consent of the patient; or

(b) If authorized by an appropriate order of a court of competent jurisdiction in the county where the records are located compelling a party to produce in court specified records and specifically describing the records being sought, when the order is granted after an application showing probable cause therefor. In assessing probable cause, the court shall do all of the following:

(1) Weigh the public interest and the need for disclosure against the injury to the patient, to the physician–patient relationship, and to the treatment services.

(2) Determine that there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution.

(3) Determine that the crime involves the causing of, or direct threatening of, the loss of life or serious bodily injury.

(4) In granting or denying a subpoena, the court shall state on the record the reasons for its decision and the facts which the court considered in making such a ruling.

(5) If a court grants an order permitting disclosure of such records,

the court shall issue all orders necessary to protect, to the maximum extent possible, the patient's privacy and the privacy and confidentiality of the physician–patient relationship.

(6) Any records disclosed pursuant to the provisions of this subdivision and any copies thereof shall be returned to the facility at the completion of the investigation or prosecution unless they have been made a part of the court record.

(c) A governmental law enforcement agency applying for disclosure of patient records under this subdivision may petition the court for an order, upon a showing of probable cause to believe that delay would seriously impede the investigation, which requires the ordered party to produce the records forthwith.

(d) Records obtained by a governmental law enforcement agency pursuant to this section shall not be disseminated to any other agency or person unless such dissemination relates to the criminal investigation for which the records were obtained by the governmental law enforcement agency. The willful dissemination of any record in violation of this paragraph shall constitute a misdemeanor.

(e) If any records obtained pursuant to this section are of a patient presently receiving treatment at the state hospital serving the mentally disabled, the law enforcement agency shall only receive copies of the original records.

(Added by Stats.1985, c. 1036, § 1.)

§ 5328.02. Confidential information and records; disclosure to youth authority and adult correctional agency

Notwithstanding Section 5328, all information and records made confidential under the first paragraph of Section 5328 shall also be disclosed to the Youth Authority and Adult Correctional Agency or any component thereof, as necessary to the administration of justice.

(Added by Stats.1980, c. 1117, p. 3608, § 26.)

§ 5328.05. Confidential information and records; elder abuse or neglect; consent; staff requirements

(a) Notwithstanding Section 5328, information and records may be disclosed when an older adult client, in the opinion of a designee of a human service agency serving older adults through an established multidisciplinary team, presents signs or symptoms of elder abuse or neglect, whether inflicted by another or self–inflicted, the agency designee to the multidisciplinary team may, with the older adult's consent, obtain information from other county agencies regarding, and limited to, whether or not a client is receiving services from any other county agency.

(b) The information obtained pursuant to subdivision (a) shall not include information regarding the nature of the treatment or services provided, and shall be shared among multidisciplinary team members for multidisciplinary team activities pursuant to this section.

(c) The county agencies which may cooperate and share information under this section shall have staff designated as members of an established multidisciplinary team, and include, but not be limited to, the county departments of public social services, health, mental health, and alcohol and drug abuse, the public guardian, and the area agencies on aging.

(d) The county patient's rights advocate shall report any negative consequences of the implementation of this exception to confidentiality requirements to the local mental health director.

(Added by Stats.1990, c. 654 (S.B.2488), § 1.)

§ 5328.06. Disclosure of information and records to protection and advocacy agency for rights of people with mental disabilities and mental illness

(a) Notwithstanding Section 5328, information and records shall be disclosed to the protection and advocacy agency established in this state to fulfill the requirements and assurances of the federal Protection and Advocacy for the Mentally Ill Individuals Amendments Act of 1991, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code, for the protection and advocacy of the rights of people with mental disabilities, including people with mental illness, as defined in Section 10802(4) of Title 42 of the United States Code.

(b) Access to information and records to which subdivision (a) applies shall be in accord with Division 4.7 (commencing with Section 4900).

(Added by Stats.1991, c. 534 (S.B.1088), § 8. Amended by Stats.2003, c. 878 (S.B.577), § 10.)

§ 5328.1. Information to patient's family; patient authorization; liability for damages

(a) Upon request of a member of the family of a patient, or other person designated by the patient, a public or private treatment facility shall give the family member or the designee notification of the patient's diagnosis, the prognosis, the medications prescribed, the side effects of medications prescribed, if any, and the progress of the patient, if, after notification of the patient that this information is requested, the patient authorizes its disclosure. If, when initially informed of the request for notification, the patient is unable to authorize the release of such information, notation of the attempt shall be made into the patient's treatment record, and daily efforts shall be made to secure the patient's consent or refusal of authorization. However, if a request for information is made by the spouse, parent, child, or sibling of the patient and the patient is unable to authorize the release of such information, the requester shall be given notification of the patient's presence in the facility, except to the extent prohibited by federal law.

(b) Upon the admission of any mental health patient to a 24–hour public or private health facility licensed pursuant to Section 1250 of the Health and Safety Code, the facility shall make reasonable attempts to notify the patient's next of kin or any other person designated by the patient, of the patient's admission, unless the patient requests that this information not be provided. The facility shall make reasonable attempts to notify the patient's next of kin or any other person designated by the patient, of the patient's release, transfer, serious illness, injury, or death only upon request of the family member, unless the patient requests that this information not be provided. The patient shall be advised by the facility that he or she has the right to request that this information not be provided.

(c) No public or private entity or public or private employee shall be liable for damages caused or alleged to be caused by the release of information or the omission to release information pursuant to this section.

Nothing in this section shall be construed to require photocopying of a patient's medical records in order to satisfy its provisions.

(Added by Stats.1969, c. 722, p. 1430, § 22, eff. Aug. 8, 1969, operative July 1, 1969. Amended by Stats.1970, c. 1627, p. 3447, § 22; Stats.1980, c. 924, p. 2932, § 1; Stats.1983, c. 1174, § 2.)

§ 5328.2. Criminal matters; information to department of justice

Notwithstanding Section 5328, movement and identification information and records regarding a patient who is committed to the department, state hospital, or any other public or private mental health facility approved by the county mental health director for observation or for an indeterminate period as a mentally disordered sex offender, or for a person who is civilly committed as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6, or regarding a patient who is committed to the department, to a state hospital, or any other public or private mental health facility approved by the county mental health director under Section 1026 or 1370 of the Penal Code or receiving treatment pursuant to Section 5300 of this code, shall be forwarded immediately without prior request to the Department of Justice. Except as otherwise provided by law, information automatically reported under this section shall be restricted to name, address, fingerprints, date of admission, date of discharge, date of escape or return from escape,

date of any home leave, parole or leave of absence and, if known, the county in which the person will reside upon release. The Department of Justice may in turn furnish information reported under this section pursuant to Section 11105 or 11105.1 of the Penal Code. It shall be a misdemeanor for recipients furnished with this information to in turn furnish the information to any person or agency other than those specified in Section 11105 or 11105.1 of the Penal Code.
(Added by Stats.1970, c. 1627, p. 3447, § 22.5. Amended by Stats.1972, c. 1377, p. 2857, § 121; Stats.1977, c. 691, p. 2231, § 4; Stats.1983, c. 754, § 5; Stats.1984, c. 1415, § 4; Stats.1997, c. 818 (A.B.1303), § 6.)

§ 5328.3. Notice of disappearance of patient

(a) When a voluntary patient would otherwise be subject to the provisions of Section 5150 of this part and disclosure is necessary for the protection of the patient or others due to the patient's disappearance from, without prior notice to, a designated facility and his or her whereabouts is unknown, notice of the disappearance may be made to relatives and governmental law enforcement agencies designated by the physician in charge of the patient or the professional person in charge of the facility or his or her designee.

(b)(1) When an involuntary patient is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008, and the patient has disappeared from a designated facility, or is transferred between state hospitals, notice of the disappearance or transfer shall be made to the court initially ordering the patient's commitment pursuant to Section 1370 of the Penal Code, the district attorney for the county that ordered the commitment, and governmental law enforcement agencies designated by the physician in charge of the patient or the professional person in charge of the facility or his or her designee. This notice shall be made within 24 hours of the patient's disappearance or transfer from the facility.

(2) A designated facility shall not permit the release of an involuntary patient who is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008, without prior written authorization of the court pursuant to paragraph (2) of subdivision (d) of Section 5358. The court may approve the pending release without a hearing unless a party notified pursuant to subdivision (d) of Section 5358 objects to the pending release within 10 days after receiving notice. This paragraph does not apply to the transfer of persons between state hospitals.
(Added by Stats.1970, c. 1627, p. 3447, § 22.6. Amended by Stats.1995, c. 593 (A.B.145), § 2.)

§ 5328.35. Patient escape or walkaway; development of notification policies and procedures

The State Department of Mental Health shall develop policies and procedures no later than 30 days after the effective date of the Budget Act of 1998, at each state hospital, to notify Members of the Legislature who represent the district in which the state hospital is located, local law enforcement, and designated local government officials in the event of a patient escape or walkaway.
(Added by Stats.1998, c. 310 (A.B.2780), § 65, eff. Aug. 19, 1998.)

§ 5328.4. Crimes against person by or upon patient; release of information

The physician in charge of the patient, or the professional person in charge of the facility or his or her designee, when he or she has probable cause to believe that a patient while hospitalized has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, carjacking, robbery, assault with intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, unlawful possession of a weapon as provided in Section 12020 of the Penal Code, or escape from a hospital by a mentally disordered sex offender as provided in Section 6330 of the Welfare and Institutions Code, shall release information about the patient to governmental law enforcement agencies.

The physician in charge of the patient, or the professional person in charge of the facility or his or her designee, when he or she has probable cause to believe that a patient, while hospitalized has committed, or has been the victim of assault or battery may release information about the patient to governmental law enforcement agencies.

This section shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her voluntary or involuntary admission, commitment, or treatment.

This section shall not be construed as an exception to or in any other way affecting the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code.
(Added by Stats.1978, c. 160, p. 391, § 2. Amended by Stats.1989, c. 897, § 46; Stats.1993, c. 610 (A.B.6), § 32, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 36, eff. Oct. 1, 1993.)

§ 5328.5. Confidential information and records; disclosure; elder abuse or dependent adult abuse

Information and records described in Section 5328 may be disclosed in communications relating to the prevention, investigation, or treatment of elder abuse or dependent adult abuse pursuant to Chapter 11 (commencing with Section 15600) and Chapter 13 (commencing with Section 15750), of Part 3 of Division 9.
(Added by Stats.1987, c. 1166, § 1, eff. Sept. 26, 1987.)

§ 5328.6. Record of disclosures

When any disclosure of information or records is made as authorized by the provisions of Section 11878 or 11879 of the Health and Safety Code, subdivision (a) or (d) of Section 5328, Sections 5328.1, 5328.3, or 5328.4, the physician in charge of the patient or the professional person in charge of the facility shall promptly cause to be entered into the patient's medical record: the date and circumstances under which such disclosure was made; the names and relationships to the patient if any, of persons or agencies to whom such disclosure was made; and the specific information disclosed.
(Added by Stats.1970, c. 1627, p. 3448, § 23.5. Amended by Stats.1975, c. 1108, p. 2685, § 3; Stats.1980, c. 676, p. 2038, § 333.)

§ 5328.7. Consent forms; record of forms used; copy for patient

Signed consent forms by a patient for release of any information to which such patient is required to consent under the provisions of Sections 11878 or 11879 of the Health and Safety Code or subdivision (a) or (d) of Section 5328 shall be obtained for each separate use with the use specified, the information to be released, the name of the agency or individual to whom information will be released indicated on the form and the name of the responsible individual who has authorization to release information specified. Any use of this form shall be noted in the patient file. Patients who sign consent forms shall be given a copy of the consent form signed.
(Added by Stats.1975, c. 1108, p. 2685, § 4. Amended by Stats.1980, c. 676, p. 2038, § 334.)

§ 5328.8. Death of patient in state mental hospital; release of information to coroner

The State Department of Mental Health, the physician in charge of the patient, or the professional person in charge of the facility or his or her designee, shall, except as otherwise provided in this section, release information obtained in the course of providing services under Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to the coroner when a patient dies from any cause, natural or otherwise, while hospitalized in a state mental hospital. The State Department of Mental Health, the physician in charge of the patient, or the professional person in charge of the facility or his or her designee, shall not release any notes, summaries, transcripts, tapes, or records of conversations between the patient and health professional personnel of the hospital relating to the personal life of the patient

which is not related to the diagnosis and treatment of the patient's physical condition. Any information released to the coroner pursuant to this section shall remain confidential and shall be sealed and shall not be made part of the public record.
(Added by Stats.1977, c. 498, p. 1624, § 2. Amended by Stats.1978, c. 69, p. 192, § 6; Stats.1979, c. 373, p. 1398, § 365; Stats.1982, c. 1141, § 8.)

§ 5328.9. Disclosure to employer; conditions; disclosure to patient; notice of nondisclosure to superior court

If at such time as a patient's hospital records are required by an employer to whom the patient has applied for employment, such records shall be forwarded to a qualified physician or psychiatrist representing the employer upon the request of the patient unless the physician or administrative officer responsible for the patient deems the release of such records contrary to the best interest of the patient.

If the physician or administrative officer responsible for a patient deems the release of such records contrary to the best interest of the patient, he shall notify the patient within five days. In the event that the disclosure of the patient's records to the patient himself would not serve his best interests, the physician or administrative officer in question shall render formal notice of his decision to the superior court of the county in which the patient resides.
(Added by Stats.1972, c. 1058, p. 1961, § 3.)

§ 5328.15. Authorized disclosure of confidential information and records

All information and records obtained in the course of providing services under Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7000), to either voluntary or involuntary recipients of services shall be confidential. Information and records may be disclosed, however, notwithstanding any other provision of law, as follows:

(a) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Services, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities and to ensure that the standards of care and services provided in such facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) of, and Chapter 3 (commencing with Section 1500) of, Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Health Services or the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names which are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Health Services or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Health Services or the State Department of Social Services shall not contain the name of the patient.

(b) To any board which licenses and certifies professionals in the fields of mental health pursuant to state law, when the Director of Mental Health has reasonable cause to believe that there has occurred a violation of any provision of law subject to the jurisdiction of that board and the records are relevant to the violation. This information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the patient.
(Added by Stats.1980, c. 695, p. 2095, § 1. Amended by Stats.1982, c. 1141, § 9; Stats.1985, c. 994, § 2.)

§ 5329. Statistical data

Nothing in this chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards set by the Director of Mental Health.
(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2660, § 49, operative July 1, 1969; Stats.1973, c. 142, p. 417, § 70.5, eff. June 30, 1973, operative July 1, 1973; Stats.1977, c. 1252, p. 4576, § 571, operative July 1, 1978; Stats.1978, c. 429, p. 1455, § 209, eff. July 17, 1978, operative July 1, 1978; Stats.1982, c. 1141, § 10.)

§ 5330. Action for damages

(a) Any person may bring an action against an individual who has willfully and knowingly released confidential information or records concerning him or her in violation of this chapter, or of Chapter 1 (commencing with Section 11860) of Part 3 of Division 10.5 of the Health and Safety Code, for the greater of the following amounts:

(1) Ten thousand dollars ($10,000).

(2) Three times the amount of actual damages, if any, sustained by the plaintiff.

(b) Any person may bring an action against an individual who has negligently released confidential information or records concerning him or her in violation of this chapter, or of Chapter 1 (commencing with Section 11860) of Part 3 of Division 10.5 of the Health and Safety Code, for both of the following:

(1) One thousand dollars ($1,000). In order to recover under this paragraph, it shall not be a prerequisite that the plaintiff suffer or be threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the plaintiff.

(c) Any person may, in accordance with Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin the release of confidential information or records in violation of this chapter, and may in the same action seek damages as provided in this section.

(d) In addition to the amounts specified in subdivisions (a) and (b), the plaintiff shall recover court costs and reasonable attorney's fees as determined by the court.
(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1975, c. 1108, p. 2685, § 5; Stats.1980, c. 676, p. 2038, § 335; Stats.1998, c. 738 (S.B.2098), § 1, eff. Sept. 22, 1998.)

§ 5331. Evaluation on competency; effect; statement of California Law

No person may be presumed to be incompetent because he or she has been evaluated or treated for mental disorder or chronic alcoholism, regardless of whether such evaluation or treatment was voluntarily or involuntarily received. Any person who leaves a public or private mental health facility following evaluation or treatment for mental disorder or chronic alcoholism, regardless of whether that evaluation or treatment was voluntarily or involuntarily received, shall be given a statement of California law as stated in this paragraph.

Any person who has been, or is, discharged from a state hospital and received voluntary or involuntary treatment under former provisions of this code relating to inebriates or the mentally ill shall, upon request to the state hospital superintendent or the State Department of Mental Health, be given a statement of California law as stated in this section unless the person is found to be incompetent under proceedings for conservatorship or guardianship.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2660, § 50, operative July 1, 1969; Stats.1971, c. 1593, p. 3342, § 378, operative July 1, 1973; Stats.1977, c. 1252, p. 4572, § 572, operative July 1, 1978.)

§ 5332. Administration of antipsychotic medication to persons subject to detention; consideration of treatment alternatives; internal procedures at hospitals; acquisition of person's medication history; emergency procedures

(a) Antipsychotic medication, as defined in subdivision (l) of Section 5008, may be administered to any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, if that person does not refuse that medication following disclosure of the right to refuse medication as well as information required to be given to persons pursuant to subdivision (c) of Section 5152 and subdivision (b) of Section 5213.

(b) If any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, and for whom antipsychotic medication has been prescribed, orally refuses or gives other indication of refusal of treatment with that medication, the medication shall be administered only when treatment staff have considered and determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the patient, and upon a determination of that person's incapacity to refuse the treatment, in a hearing held for that purpose.

(c) Each hospital in conjunction with the hospital medical staff or any other treatment facility in conjunction with its clinical staff shall develop internal procedures for facilitating the filing of petitions for capacity hearings and other activities required pursuant to this chapter.

(d) When any person is subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, the agency or facility providing the treatment shall acquire the person's medication history, if possible.

(e) In the case of an emergency, as defined in subdivision (m) of Section 5008, a person detained pursuant to Section 5150, 5250, 5260, or 5270.15 may be treated with antipsychotic medication over his or her objection prior to a capacity hearing, but only with antipsychotic medication that is required to treat the emergency condition, which shall be provided in the manner least restrictive to the personal liberty of the patient. It is not necessary for harm to take place or become unavoidable prior to intervention.

(Added by Stats.1991, c. 681 (S.B.665), § 3. Amended by Stats.2001, c. 506 (A.B.1424), § 9.)

§ 5333. Capacity hearings; representation by advocate or counsel; petition; notice

(a) Persons subject to capacity hearings pursuant to Section 5332 shall have a right to representation by an advocate or legal counsel. "Advocate," as used in this section, means a person who is providing mandated patients' rights advocacy services pursuant to Chapter 6.2 (commencing with Section 5500), and this chapter. If the Department of Mental Health provides training to patients' rights advocates, that training shall include issues specific to capacity hearings.

(b) Petitions for capacity hearings pursuant to Section 5332 shall be filed with the superior court. The director of the treatment facility or his or her designee shall personally deliver a copy of the notice of the filing of the petition for a capacity hearing to the person who is the subject of the petition.

(c) The mental health professional delivering the copy of the notice of the filing of the petition to the court for a capacity hearing shall, at the time of delivery, inform the person of his or her legal right to a capacity hearing, including the right to the assistance of the patients' rights advocate or an attorney to prepare for the hearing and to answer any questions or concerns.

(d) As soon after the filing of the petition for a capacity hearing is practicable, an attorney or a patients' rights advocate shall meet with the person to discuss the capacity hearing process and to assist the person in preparing for the capacity hearing and to answer questions or to otherwise assist the person, as is appropriate.

(Added by Stats.1991, c. 681 (S.B.665), § 4.)

§ 5334. Capacity hearings; time for hearing; location; hearing officer; determination; notification; appeal; habeas corpus

(a) Capacity hearings required by Section 5332 shall be heard within 24 hours of the filing of the petition whenever possible. However, if any party needs additional time to prepare for the hearing, the hearing shall be postponed for 24 hours. In case of hardship, hearings may also be postponed for an additional 24 hours, pursuant to local policy developed by the county mental health director and the presiding judge of the superior court regarding the scheduling of hearings. The policy developed pursuant to this subdivision shall specify procedures for the prompt filing and processing of petitions to ensure that the deadlines set forth in this section are met, and shall take into consideration the availability of advocates and the treatment needs of the patient. In no event shall hearings be held beyond 72 hours of the filing of the petition. The person who is the subject of the petition and his or her advocate or counsel shall receive a copy of the petition at the time it is filed.

(b) Capacity hearings shall be held in an appropriate location at the facility where the person is receiving treatment, and shall be held in a manner compatible with, and the least disruptive of, the treatment being provided to the person.

(c) Capacity hearings shall be conducted by a superior court judge, a court–appointed commissioner or referee, or a court–appointed hearing officer. All commissioners, referees, and hearing officers shall be appointed by the superior court from a list of attorneys unanimously approved by a panel composed of the local mental health director, the county public defender, and the county counsel or district attorney designated by the county board of supervisors. No employee of the county mental health program or of any facility designated by the county and approved by the department as a facility for 72–hour treatment and evaluation may serve as a hearing officer. All hearing officers shall receive training in the issues specific to capacity hearings.

(d) The person who is the subject of the capacity hearing shall be given oral notification of the determination at the conclusion of the capacity hearing. As soon thereafter as is practicable, the person, his or her counsel or advocate, and the director of the facility where the person is receiving treatment shall be provided with written notification of the capacity determination, which shall include a statement of the evidence relied upon and the reasons for the determination. A copy of the determination shall be submitted to the superior court.

(e)(1) The person who is the subject of the capacity hearing may appeal the determination to the superior court or the court of appeal.

(2) The person who has filed the original petition for a capacity hearing may request the district attorney or county counsel in the county in which the person is receiving treatment to appeal the determination to the superior court or the court of appeal, on behalf of the state.

(3) Nothing shall prohibit treatment from being initiated pending appeal of a determination of incapacity pursuant to this section.

(4) Nothing in this section shall be construed to preclude the right of a person to bring a writ of habeas corpus pursuant to Section 5275, subject to the provisions of this chapter.

(f) All appeals to the superior court pursuant to this section shall be subject to de novo review.

(Added by Stats.1991, c. 681 (S.B.665), § 5.)

§ 5336. Capacity hearings; effect of determination

Any determination of a person's incapacity to refuse treatment with antipsychotic medication made pursuant to Section 5334 shall remain in effect only for the duration of the detention period described in Section 5150 or 5250, or both, or until capacity has been restored according to standards developed pursuant to subdivision (c) of

Section 5332, or by court determination, whichever is sooner.
(Added by Stats.1991, c. 681 (S.B.665), § 6.)

§ 5337. Persons determined at certification review hearing to be danger to others; right to file petition for post certification

Notwithstanding Section 5257, nothing shall prohibit the filing of a petition for post certification pursuant to Article 6 (commencing with Section 5300) for persons who have been determined to be a danger to others at a certification review hearing.
(Added by Stats.1991, c. 681 (S.B.665), § 7.)

Article 8 COMMUNITY CONTROLLED SUBSTANCES TREATMENT SERVICES

§ 5340. Legislature intent

It is the intention of the Legislature by enacting this article to provide legal procedures for the custody, evaluation, and treatment of users of controlled substances. The enactment of this article shall not be construed to be evidence that any person subject to its provisions is mentally disordered, or evidence that the Legislature considers that such persons are mentally disordered.
(Added by Stats.1970, c. 1502, p. 2986, § 1. Amended by Stats.1984, c. 1635, § 99.)

§ 5341. Controlled substances defined

As used in this article, "controlled substances" means those substances referred to in Division 10 (commencing with Section 11000) of the Health and Safety Code.
(Added by Stats.1984, c. 1635, § 101.)

§ 5342. Construction

Where other applicable sections of this part contain the phrase "a danger to himself or herself or others, or gravely disabled," such sections shall be deemed to refer to the condition of danger to self or others or grave disability as a result of the use of controlled substances, rather than by mental disorder, as such.
(Added by Stats.1970, c. 1502, p. 2987, § 1. Amended by Stats.1984, c. 1635, § 102.)

§ 5343. Laws applicable

Notwithstanding any other provision of law, if any person is a danger to others or to himself or herself, or gravely disabled, as a result of the use of controlled substances, he or she shall be subject, insofar as possible, to the provisions of Articles 1 (commencing with Section 5150), 2 (commencing with Section 5200), 4 (commencing with Section 5250), 5 (commencing with Section 5275), and 7 (commencing with Section 5325) of this chapter, except that any custody, evaluation and treatment, or any procedure pursuant to such provisions shall only be related to and concerned with the problem of the person's use of controlled substances.
(Added by Stats.1970, c. 1502, p. 2987, § 1. Amended by Stats.1984, c. 1635, § 103.)

§ 5344. Expenditures

Any expenditure for the custody, evaluation, treatment, or other procedures for services rendered a person pursuant to this article shall be considered an expenditure made under the provisions of Part 2 (commencing with Section 5600) of this division, and shall be paid as are other expenditures pursuant to that part. No person shall be admitted to a state hospital for care and treatment of his or her use of controlled substances prior to screening and referral by an agency designated in the county Short–Doyle plan to provide the services.
(Added by Stats.1970, c. 1502, p. 2987, § 1. Amended by Stats.1984, c. 1635, § 104.)

Article 9 THE ASSISTED OUTPATIENT TREATMENT DEMONSTRATION PROJECT ACT OF 2002

Operative Effect

For operative effect of this article, see Welfare and Institutions Code § 5349.

Repeal

For repeal of Article 9, see Welfare and Institutions Code § 5349.5.

§ 5345. Short title; definitions

(a) This article shall be known, and may be cited, as Laura's Law.

(b) "Assisted outpatient treatment" shall be defined as categories of outpatient services that have been ordered by a court pursuant to Section 5346 or 5347.
(Added by Stats.2002, c. 1017 (A.B.1421), § 2.)

Operative Effect

For operative effect of this article, see Welfare and Institutions Code § 5349.

Repeal

For repeal of Article 9, see Welfare and Institutions Code § 5349.5.

§ 5346. Assisted outpatient treatment; orders; petitions; right to counsel; hearings; treatment plan; involuntary detention; continued treatment; habeas corpus

(a) In any county in which services are available as provided in Section 5348, a court may order a person who is the subject of a petition filed pursuant to this section to obtain assisted outpatient treatment if the court finds, by clear and convincing evidence, that the facts stated in the verified petition filed in accordance with this section are true and establish that all of the requisite criteria set forth in this section are met, including, but not limited to, each of the following:

(1) The person is 18 years of age or older.

(2) The person is suffering from a mental illness as defined in paragraphs (2) and (3) of subdivision (b) of Section 5600.3.

(3) There has been a clinical determination that the person is unlikely to survive safely in the community without supervision.

(4) The person has a history of lack of compliance with treatment for his or her mental illness, in that at least one of the following is true:

(A) The person's mental illness has, at least twice within the last 36 months, been a substantial factor in necessitating hospitalization, or receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition.

(B) The person's mental illness has resulted in one or more acts of serious and violent behavior toward himself or herself or another, or threats, or attempts to cause serious physical harm to himself or herself or another within the last 48 months, not including any period in which the person was hospitalized or incarcerated immediately preceding the filing of the petition.

(5) The person has been offered an opportunity to participate in a treatment plan by the director of the local mental health department, or his or her designee, provided the treatment plan includes all of the services described in Section 5348, and the person continues to fail to engage in treatment.

(6) The person's condition is substantially deteriorating.

(7) Participation in the assisted outpatient treatment program would be the least restrictive placement necessary to ensure the person's recovery and stability.

(8) In view of the person's treatment history and current behavior, the person is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to himself or herself, or to others, as defined in Section 5150.

(9) It is likely that the person will benefit from assisted outpatient treatment.

(b)(1) A petition for an order authorizing assisted outpatient treatment may be filed by the county mental health director, or his or her designee, in the superior court in the county in which the person who is the subject of the petition is present or reasonably believed to be present.

(2) A request may be made only by any of the following persons to the county mental health department for the filing of a petition to obtain an order authorizing assisted outpatient treatment:

(A) Any person 18 years of age or older with whom the person who is the subject of the petition resides.

(B) Any person who is the parent, spouse, or sibling or child 18 years of age or older of the person who is the subject of the petition.

(C) The director of any public or private agency, treatment facility, charitable organization, or licensed residential care facility providing mental health services to the person who is the subject of the petition in whose institution the subject of the petition resides.

(D) The director of a hospital in which the person who is the subject of the petition is hospitalized.

(E) A licensed mental health treatment provider who is either supervising the treatment of, or treating for a mental illness, the person who is the subject of the petition.

(F) A peace officer, parole officer, or probation officer assigned to supervise the person who is the subject of the petition.

(3) Upon receiving a request pursuant to paragraph (2), the county mental health director shall conduct an investigation into the appropriateness of the filing of the petition. The director shall file the petition only if he or she determines that there is a reasonable likelihood that all the necessary elements to sustain the petition can be proven in a court of law by clear and convincing evidence.

(4) The petition shall state all of the following:

(A) Each of the criteria for assisted outpatient treatment as set forth in subdivision (a).

(B) Facts that support the petitioner's belief that the person who is the subject of the petition meets each criterion, provided that the hearing on the petition shall be limited to the stated facts in the verified petition, and the petition contains all the grounds on which the petition is based, in order to ensure adequate notice to the person who is the subject of the petition and his or her counsel.

(C) That the person who is the subject of the petition is present, or is reasonably believed to be present, within the county where the petition is filed.

(D) That the person who is the subject of the petition has the right to be represented by counsel in all stages of the proceeding under the petition, in accordance with subdivision (c).

(5) The petition shall be accompanied by an affidavit of a licensed mental health treatment provider designated by the local mental health director who shall state, if applicable, either of the following:

(A) That the licensed mental health treatment provider has personally examined the person who is the subject of the petition no more than 10 days prior to the submission of the petition, the facts and reasons why the person who is the subject of the petition meets the criteria in subdivision (a), that the licensed mental health treatment provider recommends assisted outpatient treatment for the person who is the subject of the petition, and that the licensed mental health treatment provider is willing and able to testify at the hearing on the petition.

(B) That no more than 10 days prior to the filing of the petition, the licensed mental health treatment provider, or his or her designee, has made appropriate attempts to elicit the cooperation of the person who is the subject of the petition, but has not been successful in persuading that person to submit to an examination, that the licensed mental health treatment provider has reason to believe that the person who is the subject of the petition meets the criteria for assisted outpatient treatment, and that the licensed mental health treatment provider is willing and able to examine the person who is the subject of the petition and testify at the hearing on the petition.

(c) The person who is the subject of the petition shall have the right to be represented by counsel at all stages of a proceeding commenced under this section. If the person so elects, the court shall immediately appoint the public defender or other attorney to assist the person in all stages of the proceedings. The person shall pay the cost of the legal services if he or she is able.

(d)(1) Upon receipt by the court of a petition submitted pursuant to subdivision (b), the court shall fix the date for a hearing at a time not later than five days from the date the petition is received by the court, excluding Saturdays, Sundays, and holidays. The petitioner shall promptly cause service of a copy of the petition, together with written notice of the hearing date, to be made personally on the person who is the subject of the petition, and shall send a copy of the petition and notice to the county office of patient rights, and to the current health care provider appointed for the person who is the subject of the petition, if any such provider is known to the petitioner. Continuances shall be permitted only for good cause shown. In granting continuances, the court shall consider the need for further examination by a physician or the potential need to provide expeditiously assisted outpatient treatment. Upon the hearing date, or upon any other date or dates to which the proceeding may be continued, the court shall hear testimony. If it is deemed advisable by the court, and if the person who is the subject of the petition is available and has received notice pursuant to this section, the court may examine in or out of court the person who is the subject of the petition who is alleged to be in need of assisted outpatient treatment. If the person who is the subject of the petition does not appear at the hearing, and appropriate attempts to elicit the attendance of the person have failed, the court may conduct the hearing in the person's absence. If the hearing is conducted without the person present, the court shall set forth the factual basis for conducting the hearing without the person's presence.

(2) The court shall not order assisted outpatient treatment unless an examining licensed mental health treatment provider, who has personally examined, and has reviewed the available treatment history of, the person who is the subject of the petition within the time period commencing 10 days before the filing of the petition, testifies in person at the hearing.

(3) If the person who is the subject of the petition has refused to be examined by a licensed mental health treatment provider, the court may request that the person consent to an examination by a licensed mental health treatment provider appointed by the court. If the person who is the subject of the petition does not consent and the court finds reasonable cause to believe that the allegations in the petition are true, the court may order any person designated under Section 5150 to take into custody the person who is the subject of the petition and transport him or her, or cause him or her to be transported, to a hospital for examination by a licensed mental health treatment provider as soon as is practicable. Detention of the person who is the subject of the petition under the order may not exceed 72 hours. If the examination is performed by another licensed mental health treatment provider, the examining licensed mental health treatment provider may consult with the licensed mental health treatment provider whose affirmation or affidavit accompanied the petition regarding the issues of whether the allegations in the petition are true and whether the person meets the criteria for assisted outpatient treatment.

(4) The person who is the subject of the petition shall have all of the following rights:

(A) To adequate notice of the hearings to the person who is the subject of the petition, as well as to parties designated by the person who is the subject of the petition.

(B) To receive a copy of the court–ordered evaluation.

(C) To counsel. If the person has not retained counsel, the court shall appoint a public defender.

(D) To be informed of his or her right to judicial review by habeas corpus.

(E) To be present at the hearing unless he or she waives the right to be present.

(F) To present evidence.

(G) To call witnesses on his or her behalf.

(H) To cross–examine witnesses.

(I) To appeal decisions, and to be informed of his or her right to appeal.

(5)(A) If after hearing all relevant evidence, the court finds that the person who is the subject of the petition does not meet the criteria for assisted outpatient treatment, the court shall dismiss the petition.

(B) If after hearing all relevant evidence, the court finds that the person who is the subject of the petition meets the criteria for assisted outpatient treatment, and there is no appropriate and feasible less restrictive alternative, the court may order the person who is the subject of the petition to receive assisted outpatient treatment for an initial period not to exceed six months. In fashioning the order, the court shall specify that the proposed treatment is the least restrictive treatment appropriate and feasible for the person who is the subject of the petition. The order shall state the categories of assisted outpatient treatment, as set forth in Section 5348, that the person who is the subject of the petition is to receive, and the court may not order treatment that has not been recommended by the examining licensed mental health treatment provider and included in the written treatment plan for assisted outpatient treatment as required by subdivision (e). If the person has executed an advance health care directive pursuant to Chapter 2 (commencing with Section 4650) of Part 1 of Division 4.7 of the Probate Code, any directions included in the advance health care directive shall be considered in formulating the written treatment plan.

(6) If the person who is the subject of a petition for an order for assisted outpatient treatment pursuant to subparagraph (B) of paragraph (5) of subdivision (d) refuses to participate in the assisted outpatient treatment program, the court may order the person to meet with the assisted outpatient treatment team designated by the director of the assisted outpatient treatment program. The treatment team shall attempt to gain the person's cooperation with treatment ordered by the court. The person may be subject to a 72–hour hold pursuant to subdivision (f) only after the treatment team has attempted to gain the person's cooperation with treatment ordered by the court, and has been unable to do so.

(e) Assisted outpatient treatment shall not be ordered unless the licensed mental health treatment provider recommending assisted outpatient treatment to the court has submitted to the court a written treatment plan that includes services as set forth in Section 5348, and the court finds, in consultation with the county mental health director, or his or her designee, all of the following:

(1) That the services are available from the county, or a provider approved by the county, for the duration of the court order.

(2) That the services have been offered to the person by the local director of mental health, or his or her designee, and the person has been given an opportunity to participate on a voluntary basis, and the person has failed to engage in, or has refused, treatment.

(3) That all of the elements of the petition required by this article have been met.

(4) That the treatment plan will be delivered to the county director of mental health, or to his or her appropriate designee.

(f) If, in the clinical judgment of a licensed mental health treatment provider, the person who is the subject of the petition has failed or has refused to comply with the treatment ordered by the court, and, in the clinical judgment of the licensed mental health treatment provider, efforts were made to solicit compliance, and, in the clinical judgment of the licensed mental health treatment provider, the person may be in need of involuntary admission to a hospital for evaluation, the provider may request that persons designated under Section 5150 take into custody the person who is the subject of the petition and transport him or her, or cause him or her to be transported, to a hospital, to be held up to 72 hours for examination by a licensed mental health treatment provider to determine if the person is in need of treatment pursuant to Section 5150. Any continued involuntary retention in a hospital beyond the initial 72–hour period shall be pursuant to Section 5150. If at any time during the 72–hour period the person is determined not to meet the criteria of Section 5150, and does not agree to stay in the hospital as a voluntary patient, he or she shall be released and any subsequent involuntary detention in a hospital shall be pursuant to Section 5150. Failure to comply with an order of assisted outpatient treatment alone may not be grounds for involuntary civil commitment or a finding that the person who is the subject of the petition is in contempt of court.

(g) If the director of the assisted outpatient treatment program determines that the condition of the patient requires further assisted outpatient treatment, the director shall apply to the court, prior to the expiration of the period of the initial assisted outpatient treatment order, for an order authorizing continued assisted outpatient treatment for a period not to exceed 180 days from the date of the order. The procedures for obtaining any order pursuant to this subdivision shall be in accordance with subdivisions (a) to (f), inclusive. The period for further involuntary outpatient treatment authorized by any subsequent order under this subdivision may not exceed 180 days from the date of the order.

(h) At intervals of not less than 60 days during an assisted outpatient treatment order, the director of the outpatient treatment program shall file an affidavit with the court that ordered the outpatient treatment affirming that the person who is the subject of the order continues to meet the criteria for assisted outpatient treatment. At these times, the person who is the subject of the order shall have the right to a hearing on whether or not he or she still meets the criteria for assisted outpatient treatment if he or she disagrees with the director's affidavit. The burden of proof shall be on the director.

(i) During each 60–day period specified in subdivision (h), if the person who is the subject of the order believes that he or she is being wrongfully retained in the assisted outpatient treatment program against his or her wishes, he or she may file a petition for a writ of habeas corpus, thus requiring the director of the assisted outpatient treatment program to prove that the person who is the subject of the order continues to meet the criteria for assisted outpatient treatment.

(j) Any person ordered to undergo assisted outpatient treatment pursuant to this article, who was not present at the hearing at which the order was issued, may immediately petition the court for a writ of habeas corpus. Treatment under the order for assisted outpatient treatment may not commence until the resolution of that petition.

(Added by Stats.2002, c. 1017 (A.B.1421), § 2. Amended by Stats.2003, c. 62 (S.B.600), § 326.)

Operative Effect

For operative effect of this article, see Welfare and Institutions Code § 5349.

Repeal

For repeal of Article 9, see Welfare and Institutions Code § 5349.5.

§ 5347. Voluntary treatment; settlement agreements

(a) In any county in which services are available pursuant to Section 5348, any person who is determined by the court to be subject to subdivision (a) of Section 5346 may voluntarily enter into an agreement for services under this section.

(b)(1) After a petition for an order for assisted outpatient treatment is filed, but before the conclusion of the hearing on the petition, the person who is the subject of the petition, or the person's legal counsel with the person's consent, may waive the right to an assisted outpatient treatment hearing for the purpose of obtaining treatment under a settlement agreement, provided that an examining licensed mental health treatment provider states that the person can survive safely in the community. The settlement agreement may not exceed 180 days in duration and shall be agreed to by all parties.

(2) The settlement agreement shall be in writing, shall be approved by the court, and shall include a treatment plan developed by the community–based program that will provide services that provide treatment in the least restrictive manner consistent with the needs of the person who is the subject of the petition.

(3) Either party may request that the court modify the treatment plan at any time during the 180–day period.

(4) The court shall designate the appropriate county department to monitor the person's treatment under, and compliance with, the settlement agreement. If the person fails to comply with the treatment according to the agreement, the designated county department shall notify the counsel designated by the county and the person's counsel of the person's noncompliance.

(5) A settlement agreement approved by the court pursuant to this section shall have the same force and effect as an order for assisted outpatient treatment pursuant to Section 5346.

(6) At a hearing on the issue of noncompliance with the agreement, the written statement of noncompliance submitted shall be prima facie evidence that a violation of the conditions of the agreement has occurred. If the person who is the subject of the petition denies any of the facts as stated in the statement, he or she has the burden of proving by a preponderance of the evidence that the alleged facts are false.
(Added by Stats.2002, c. 1017 (A.B.1421), § 2.)

Operative Effect

For operative effect of this article, see Welfare and Institutions Code § 5349.

Repeal

For repeal of Article 9, see Welfare and Institutions Code § 5349.5.

§ 5348. Services offered; involuntary medication; report

(a) For purposes of subdivision (e) of Section 5346, any county that chooses to provide assisted outpatient treatment services pursuant to this article shall offer assisted outpatient treatment services including, but not limited to, all of the following:

(1) Community–based, mobile, multidisciplinary, highly trained mental health teams that use high staff–to–client ratios of no more than 10 clients per team member for those subject to court–ordered services pursuant to Section 5346.

(2) A service planning and delivery process that includes the following:

(A) Determination of the numbers of persons to be served and the programs and services that will be provided to meet their needs. The local director of mental health shall consult with the sheriff, the police chief, the probation officer, the mental health board, contract agencies, and family, client, ethnic, and citizen constituency groups as determined by the director.

(B) Plans for services, including outreach to families whose severely mentally ill adult is living with them, design of mental health services, coordination and access to medications, psychiatric and psychological services, substance abuse services, supportive housing or other housing assistance, vocational rehabilitation, and veterans' services. Plans shall also contain evaluation strategies, that shall consider cultural, linguistic, gender, age, and special needs of minorities in the target populations. Provision shall be made for staff with the cultural background and linguistic skills necessary to remove barriers to mental health services as a result of having limited–English–speaking ability and cultural differences. Recipients of outreach services may include families, the public, primary care physicians, and others who are likely to come into contact with individuals who may be suffering from an untreated severe mental illness who would be likely to become homeless if the illness continued to be untreated for a substantial period of time. Outreach to adults may include adults voluntarily or involuntarily hospitalized as a result of a severe mental illness.

(C) Provisions for services to meet the needs of persons who are physically disabled.

(D) Provision for services to meet the special needs of older adults.

(E) Provision for family support and consultation services, parenting support and consultation services, and peer support or self–help group support, where appropriate.

(F) Provision for services to be client–directed and that employ psychosocial rehabilitation and recovery principles.

(G) Provision for psychiatric and psychological services that are integrated with other services and for psychiatric and psychological collaboration in overall service planning.

(H) Provision for services specifically directed to seriously mentally ill young adults 25 years of age or younger who are homeless or at significant risk of becoming homeless. These provisions may include continuation of services that would still be received through other funds had eligibility not been terminated as a result of age.

(I) Services reflecting special needs of women from diverse cultural backgrounds, including supportive housing that accepts children, personal services coordinator therapeutic treatment, and substance treatment programs that address gender specific trauma and abuse in the lives of persons with mental illness, and vocational rehabilitation programs that offer job training programs free of gender bias and sensitive to the needs of women.

(J) Provision for housing for clients that is immediate, transitional, permanent, or all of these.

(K) Provision for clients who have been suffering from an untreated severe mental illness for less than one year, and who do not require the full range of services, but are at risk of becoming homeless unless a comprehensive individual and family support services plan is implemented. These clients shall be served in a manner that is designed to meet their needs.

(3) Each client shall have a clearly designated mental health personal services coordinator who may be part of a multidisciplinary treatment team who is responsible for providing or assuring needed services. Responsibilities include complete assessment of the client's needs, development of the client's personal services plan, linkage with all appropriate community services, monitoring of the quality and follow through of services, and necessary advocacy to ensure each client receives those services which are agreed to in the personal services plan. Each client shall participate in the development of his or her personal services plan, and responsible staff shall consult with the designated conservator, if one has been appointed, and, with the consent of the client, shall consult with the family and other significant persons as appropriate.

(4) The individual personal services plan shall ensure that persons subject to assisted outpatient treatment programs receive age, gender, and culturally appropriate services, to the extent feasible, that are designed to enable recipients to:

(A) Live in the most independent, least restrictive housing feasible in the local community, and, for clients with children, to live in a supportive housing environment that strives for reunification with their children or assists clients in maintaining custody of their children as is appropriate.

(B) Engage in the highest level of work or productive activity appropriate to their abilities and experience.

(C) Create and maintain a support system consisting of friends, family, and participation in community activities.

(D) Access an appropriate level of academic education or vocational training.

(E) Obtain an adequate income.

(F) Self–manage their illnesses and exert as much control as possible over both the day–to–day and long–term decisions that affect their lives.

(G) Access necessary physical health care and maintain the best possible physical health.

(H) Reduce or eliminate serious antisocial or criminal behavior, and thereby reduce or eliminate their contact with the criminal justice system.

(I) Reduce or eliminate the distress caused by the symptoms of mental illness.

(J) Have freedom from dangerous addictive substances.

(5) The individual personal services plan shall describe the service array that meets the requirements of paragraph (4), and to the extent applicable to the individual, the requirements of paragraph (2).

(b) Any county that provides assisted outpatient treatment services pursuant to this article also shall offer the same services on a voluntary basis.

(c) Involuntary medication shall not be allowed absent a separate order by the court pursuant to Sections 5332 to 5336, inclusive.

(d) Each county that operates an assisted outpatient treatment program pursuant to this article shall provide data to the State Department of Mental Health and, based on the data, the department shall report to the Legislature on or before May 1 of each year in which the county provides services pursuant to this article. The report shall include, at a minimum, an evaluation of the effectiveness of the strategies employed by each program operated pursuant to this article in reducing homelessness and hospitalization of persons in the program and in reducing involvement with local law enforcement by persons in the program. The evaluation and report shall also include any other measures identified by the department regarding persons in the program and all of the following, based on information that is available:

(1) The number of persons served by the program and, of those, the number who are able to maintain housing and the number who maintain contact with the treatment system.

(2) The number of persons in the program with contacts with local law enforcement, and the extent to which local and state incarceration of persons in the program has been reduced or avoided.

(3) The number of persons in the program participating in employment services programs, including competitive employment.

(4) The days of hospitalization of persons in the program that have been reduced or avoided.

(5) Adherence to prescribed treatment by persons in the program.

(6) Other indicators of successful engagement, if any, by persons in the program.

(7) Victimization of persons in the program.

(8) Violent behavior of persons in the program.

(9) Substance abuse by persons in the program.

(10) Type, intensity, and frequency of treatment of persons in the program.

(11) Extent to which enforcement mechanisms are used by the program, when applicable.

(12) Social functioning of persons in the program.

(13) Skills in independent living of persons in the program.

(14) Satisfaction with program services both by those receiving them and by their families, when relevant.

(Added by Stats.2002, c. 1017 (A.B.1421), § 2.)

Operative Effect

For operative effect of this article, see Welfare and Institutions Code § 5349.

Repeal

For repeal of Article 9, see Welfare and Institutions Code § 5349.5.

§ 5349. Operative effect

This article shall be operative in those counties in which the county board of supervisors, by resolution, authorizes its application and makes a finding that no voluntary mental health program serving adults, and no children's mental health program, may be reduced as a result of the implementation of this article. Compliance with this section shall be monitored by the State Department of Mental Health as part of its review and approval of county Short–Doyle plans.

(Added by Stats.2002, c. 1017 (A.B.1421), § 2.)

Repeal

For repeal of Article 9, see Welfare and Institutions Code § 5349.5.

§ 5349.1. Training and education program

(a) Counties that elect to implement this article, shall, in consultation with the department, client and family advocacy organizations, and other stakeholders, develop a training and education program for purposes of improving the delivery of services to mentally ill individuals who are, or who are at risk of being, involuntarily committed under this part. This training shall be provided to mental health treatment providers contracting with participating counties and to other individuals, including, but not limited to, mental health professionals, law enforcement officials, and certification hearing officers involved in making treatment and involuntary commitment decisions.

(b) The training shall include both of the following:

(1) Information relative to legal requirements for detaining a person for involuntary inpatient and outpatient treatment, including criteria to be considered with respect to determining if a person is considered to be gravely disabled.

(2) Methods for ensuring that decisions regarding involuntary treatment as provided for in this part direct patients toward the most effective treatment. Training shall include an emphasis on each patient's right to provide informed consent to assistance.

(Added by Stats.2002, c. 1017 (A.B.1421), § 2.)

Operative Effect

For operative effect of this article, see Welfare and Institutions Code § 5349.

Repeal

For repeal of Article 9, see Welfare and Institutions Code § 5349.5.

§ 5349.5. Repeal

This article shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute that is enacted on or before January 1, 2008, deletes or extends that date.

(Added by Stats.2002, c. 1017 (A.B.1421), § 2.)

Operative Effect

For operative effect of this article, see Welfare and Institutions Code § 5349.

Chapter 3 CONSERVATORSHIP FOR GRAVELY DISABLED PERSONS

§ 5350. Appointment; procedure

A conservator of the person, of the estate, or of the person and the estate may be appointed for any person who is gravely disabled as a result of mental disorder or impairment by chronic alcoholism.

The procedure for establishing, administering, and terminating a conservatorship under this chapter shall be the same as that provided in Division 4 (commencing with Section 1400) of the Probate Code, except as follows:

(a) A conservator may be appointed for a gravely disabled minor.

(b)(1) Appointment of a conservator under this part, including the appointment of a conservator for a person who is gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008, shall be subject to the list of priorities in Section 1812 of the Probate Code unless the officer providing conservatorship investigation recommends otherwise to the superior court.

(2) In appointing a conservator, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008, the court shall consider the purposes of protection of the public and the treatment of the conservatee.

(c) No conservatorship of the estate pursuant to this chapter shall be established if a conservatorship or guardianship of the estate exists under the Probate Code. When a gravely disabled person already has a guardian or conservator of the person appointed under the Probate Code, the proceedings under this chapter shall not terminate the prior proceedings but shall be concurrent with and superior thereto. The superior court may appoint the existing guardian or conservator of the person or another person as conservator of the person under this chapter.

(d) The person for whom conservatorship is sought shall have the right to demand a court or jury trial on the issue whether he or she is gravely disabled. Demand for court or jury trial shall be made within five days following the hearing on the conservatorship petition. If the proposed conservatee demands a court or jury trial before the date of the hearing as provided for in Section 5365, the demand shall constitute a waiver of the hearing.

Court or jury trial shall commence within 10 days of the date of the demand, except that the court shall continue the trial date for a period not to exceed 15 days upon the request of counsel for the proposed conservatee.

This right shall also apply in subsequent proceedings to reestablish conservatorship.

(e)(1) Notwithstanding subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008, a person is not "gravely disabled" if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter.

(2) However, unless they specifically indicate in writing their willingness and ability to help, family, friends, or others shall not be considered willing or able to provide this help.

(3) The purpose of this subdivision is to avoid the necessity for, and the harmful effects of, requiring family, friends, and others to publicly state, and requiring the court to publicly find, that no one is willing or able to assist the mentally disordered person in providing for the person's basic needs for food, clothing, or shelter.

(4) This subdivision does not apply to a person who is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008.

(f) Conservatorship investigation shall be conducted pursuant to this part and shall not be subject to Section 1826 or Chapter 2 (commencing with Section 1850) of Part 3 of Division 4 of the Probate Code.

(g) Notice of proceedings under this chapter shall be given to a guardian or conservator of the person or estate of the proposed conservatee appointed under the Probate Code.

(h) As otherwise provided in this chapter.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1430, § 23, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1970, c. 68, p. 82, § 1; Stats.1970, c. 1627, p. 3448, § 24; Stats.1971, c. 776, p. 1529, § 4; Stats.1972, c. 574, p. 981, § 1; Stats.1978, c. 1294, p. 4244, § 4; Stats.1979, c. 730, p. 2533, § 145, operative Jan. 1, 1981; Stats.1986, c. 322, § 1; Stats.1989, c. 999, § 2; Stats.1995, c. 593 (A.B.145), § 3.)

§ 5350.1. Purpose

The purpose of conservatorship, as provided for in this article, is to provide individualized treatment, supervision, and placement.

(Added by Stats.1978, c. 1294, p. 4244, § 5.)

§ 5350.2. Notification of family members or other designated persons; time and place of hearing

Reasonable attempts shall be made by the county mental health program to notify family members or any other person designated by the person for whom conservatorship is sought, of the time and place of the conservatorship hearing. The person for whom the conservatorship is sought shall be advised by the facility treating the person that he or she may request that information about the time and place of the conservatorship hearing not be given to family members, in those circumstances where the proposed conservator is not a family member. The request shall be honored by the mental health program. Neither this section nor Section 5350 shall be interpreted to allow the proposed conservatee to request that any proposed conservator not be advised of the time and place of the conservatorship hearing.

(Added by Stats.1986, c. 872, § 5. Amended by Stats.1987, c. 56, § 183.)

§ 5351. Investigating agencies; provision of services

In each county or counties acting jointly under the provisions of Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the governing board shall designate the agency or agencies to provide conservatorship investigation as set forth in this chapter. The governing board may designate that conservatorship services be provided by the public guardian or agency providing public guardian services.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2660, § 51.5, operative July 1, 1969; Stats.1986, c. 335, § 1.)

§ 5352. Recommendation; petition; temporary conservator; procedure

When the professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment determines that a person in his care is gravely disabled as a result of mental disorder or impairment by chronic alcoholism and is unwilling to accept, or incapable of accepting, treatment voluntarily, he may recommend conservatorship to the officer providing conservatorship investigation of the county of residence of the person prior to his admission as a patient in such facility.

The professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment may recommend conservatorship for a person without the person being an inpatient in such facility, if both of the following conditions are met: (a) the professional person or another professional person designated by him has examined and evaluated the person and determined that he is gravely disabled; (b) the professional person or another professional person designated by him has determined that future examination on an inpatient basis is not necessary for a determination that the person is gravely disabled.

If the officer providing conservatorship investigation concurs with the recommendation, he shall petition the superior court in the county of residence of the patient to establish conservatorship.

Where temporary conservatorship is indicated, the fact shall be alternatively pleaded in the petition. The officer providing conservatorship investigation or other county officer or employee designated by the county shall act as the temporary conservator.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2661, § 52, operative July 1, 1969; Stats.1969, c. 722, p. 1430, § 24, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1970, c. 35, p. 56, § 1; Stats.1970, c. 1627, p. 3449, § 24.1; Stats.1972, c. 692, p. 1274, § 1; Stats.1979, c. 730, p. 2534, § 146, operative Jan. 1, 1981.)

§ 5352.1. Temporary conservatorship

The court may establish a temporary conservatorship for a period not to exceed 30 days and appoint a temporary conservator on the basis of the comprehensive report of the officer providing conservatorship investigation filed pursuant to Section 5354, or on the basis of an affidavit of the professional person who recommended conservatorship stating the reasons for his recommendation, if the court is satisfied that such comprehensive report or affidavit show the necessity for a temporary conservatorship.

Except as provided in this section, all temporary conservatorships shall expire automatically at the conclusion of 30 days, unless prior to that date the court shall conduct a hearing on the issue of whether or not the proposed conservatee is gravely disabled as defined in subdivision (h) of Section 5008.

If the proposed conservatee demands a court or jury trial on the issue whether he is gravely disabled, the court may extend the temporary conservatorship until the date of the disposition of the issue by the court or jury trial, provided that such extension shall in no event exceed a period of six months.

(Added by Stats.1969, c. 722, p. 1431, § 24.05, eff. Aug. 8, 1969, operative July 1, 1969. Amended by Stats.1971, c. 776, p. 1530, § 5; Stats.1972, c. 574, p. 981, § 2.)

§ 5352.2. Public guardian; bond and oath

Where the duly designated officer providing conservatorship investigation is a public guardian, his official oath and bond as public guardian are in lieu of any other bond or oath on the grant of temporary letters of conservatorship to him.

(Added by Stats.1970, c. 566, p. 1138, § 1.)

§ 5352.3. Additional detention pending filing petition; maximum involuntary detention for gravely disabled

If the professional person in charge of the facility providing intensive treatment recommends conservatorship pursuant to Section 5352, the proposed conservatee may be held in that facility for a period not to exceed three days beyond the designated period for intensive treatment if the additional time period is necessary for a filing of the petition for temporary conservatorship and the establishment of the temporary conservatorship by the court. The involuntary detention period for gravely disabled persons pursuant to Sections 5150, 5250, and 5170.15 shall not exceed 47 days unless continuance is granted.

(Added by Stats.1970, c. 1627, p. 3449, § 24.5. Amended by Stats.1988, c. 1517, § 13.)

§ 5352.4. Appeal of judgment establishing conservatorship; continuation of conservatorship; exception

If a conservatee appeals the court's decision to establish conservatorship, the conservatorship shall continue unless execution of judgment is stayed by the appellate court.

(Added by Stats.1972, c. 574, p. 982, § 4.)

§ 5352.5. Initiation of proceedings; reimbursement

Conservatorship proceedings may be initiated for any person committed to a state hospital or local mental health facility or placed on outpatient treatment pursuant to Section 1026 or 1370 of the Penal Code or transferred pursuant to Section 4011.6 of the Penal Code upon recommendation of the medical director of the state hospital, or a designee, or professional person in charge of the local mental health facility, or a designee, or the local mental health director, or a designee, to the conservatorship investigator of the county of residence of the person prior to his or her admission to the hospital or facility or of the county in which the hospital or facility is located. The initiation of conservatorship proceedings or the existence of a conservatorship shall not affect any pending criminal proceedings.

Subject to the provisions of Sections 5150 and 5250, conservatorship proceedings may be initiated for any person convicted of a felony who has been transferred to a state hospital under the jurisdiction of the State Department of Mental Health pursuant to Section 2684 of the Penal Code by the recommendation of the medical director of the state hospital to the conservatorship investigator of the county of residence of the person or of the county in which the state hospital is located.

Subject to the provisions of Sections 5150 and 5250, conservatorship proceedings may be initiated for any person committed to the Youth Authority, or on parole from a facility of the Youth Authority, by the Director of the Department of the Youth Authority or a designee, to the conservatorship investigator of the county of residence of the person or of the county in which the facility is situated.

The county mental health program providing conservatorship investigation services and conservatorship case management services for any persons except those transferred pursuant to Section 4011.6 of the Penal Code shall be reimbursed for the expenditures made by it for the services pursuant to the Short–Doyle Act (commencing with Section 5600) at 100 percent of the expenditures. Each county Short–Doyle plan shall include provision for the services in the plan.

(Added by Stats.1975, c. 1258, p. 3302, § 7. Amended by Stats.1977, c. 1252, p. 4572, § 572, operative July 1, 1978; Stats.1977, c. 691, p. 2231, § 5; Stats.1978, c. 429, p. 1455, § 209.5, eff. July 17, 1978, operative July 1, 1978; Stats.1986, c. 933, § 2.)

§ 5352.6. Individualized treatment plan; development; goals; progress review; termination of conservatorship by court

Within 10 days after conservatorship of the person has been established under the provisions of this article, there shall be an individualized treatment plan unless treatment is specifically found not to be appropriate by the court. The treatment plan shall be developed by the Short–Doyle Act community mental health service, the staff of a facility operating under a contract to provide such services in the individual's county of residence, or the staff of a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code to provide inpatient psychiatric treatment. The person responsible for developing the treatment plan shall encourage the participation of the client and the client's family members, when appropriate, in the development, implementation, revision, and review of the treatment plan. The individualized treatment plan shall specify goals for the individual's treatment, the criteria by which accomplishment of the goals can be judged, and a plan for review of the progress of treatment. The goals of the treatment plan shall be equivalent to reducing or eliminating the behavioral manifestations of grave disability. If a treatment plan is not developed as provided herein then the matter shall be referred to the court by the Short–Doyle Act community mental health service, or the staff of a facility operating under a contract to provide such services, or the conservator, or the attorney of record for the conservatee.

When the progress review determines that the goals have been reached and the person is no longer gravely disabled, a person designated by the county shall so report to the court and the conservatorship shall be terminated by the court.

If the conservator fails to report to the court that the person is no longer gravely disabled as provided herein, then the matter shall be referred to the court by the Short–Doyle Act community mental health service, or the staff of a facility operating under a contract to provide such services, or the attorney of record for the conservatee.

(Added by Stats.1978, c. 1294, p. 4244, § 6. Amended by Stats.1986, c. 872, § 6.)

§ 5353. Temporary conservator; arrangements pending determination of conservatorship; powers; residence of conservatee; sale or relinquishment of property

A temporary conservator under this chapter shall determine what arrangements are necessary to provide the person with food, shelter, and care pending the determination of conservatorship. He shall give preference to arrangements which allow the person to return to his home, family or friends. If necessary, the temporary conservator may require the person to be detained in a facility providing intensive treatment or in a facility specified in Section 5358 pending the determination of conservatorship. Any person so detained shall have the same right to judicial review set forth in Article 5 (commencing with Section 5275) of Chapter 2 of this part.

The powers of the temporary conservator shall be those granted in the decree, but in no event may they be broader than the powers which may be granted a conservator.

The court shall order the temporary conservator to take all reasonable steps to preserve the status quo concerning the conservatee's previous place of residence. The temporary conservator shall not be permitted to sell or relinquish on the conservatee's behalf any estate or interest in any real or personal property, including any lease or estate in real or personal property used as or within the conservatee's place of residence, without specific approval of the court, which may be granted only upon a finding based on a preponderance of the evidence that such action is necessary to avert irreparable harm to the conservatee. A finding of irreparable harm as to real property may be based upon a reasonable showing that such real property is vacant, that it cannot reasonably be rented, and that it

is impossible or impractical to obtain fire or liability insurance on such property.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2661, § 53, operative July 1, 1969; Stats.1969, c. 722, p. 1431, § 24.1, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1971, c. 776, p. 1530, § 6; Stats.1972, c. 574, p. 982, § 3; Stats.1977, c. 1237, p. 4157, § 5; Stats.1978, c. 1268, p. 4116, § 2.)

§ 5354. Investigation of alternatives to conservatorship; recommendations of conservatorship; report of investigation, necessity, contents, transmittal, use

The officer providing conservatorship investigation shall investigate all available alternatives to conservatorship and shall recommend conservatorship to the court only if no suitable alternatives are available. This officer shall render to the court a written report of investigation prior to the hearing. The report to the court shall be comprehensive and shall contain all relevant aspects of the person's medical, psychological, financial, family, vocational and social condition, and information obtained from the person's family members, close friends, social worker or principal therapist. The report shall also contain all available information concerning the person's real and personal property. The facilities providing intensive treatment or comprehensive evaluation shall disclose any records or information which may facilitate the investigation. If the officer providing conservatorship investigation recommends against conservatorship, he or she shall set forth all alternatives available. A copy of the report shall be transmitted to the individual who originally recommended conservatorship, to the person or agency, if any, recommended to serve as conservator, and to the person recommended for conservatorship. The court may receive the report in evidence and may read and consider the contents thereof in rendering its judgment.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1974, c. 833, p. 1795, § 1; Stats.1978, c. 1294, p. 4245, § 7; Stats.1982, c. 1598, § 7.)

§ 5354.5. Acceptance or rejection of position as conservator; recommendation of substitute; public guardian

Except as otherwise provided in this section, the person recommended to serve as conservator shall promptly notify the officer providing conservatorship investigation whether he or she will accept the position if appointed. If notified that the person or agency recommended will not accept the position if appointed, the officer providing conservatorship investigation shall promptly recommend another person to serve as conservator.

The public guardian shall serve as conservator of any person found by a court under this chapter to be gravely disabled, if the court recommends the conservatorship after a conservatorship investigation, and if the court finds that no other person or entity is willing and able to serve as conservator.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1986, c. 872, § 6.5.)

§ 5355. Designation of conservator; conflicts of interest; public guardian

If the conservatorship investigation results in a recommendation for conservatorship, the recommendation shall designate the most suitable person, corporation, state or local agency or county officer, or employee designated by the county to serve as conservator. No person, corporation, or agency shall be designated as conservator whose interests, activities, obligations or responsibilities are such as to compromise his or their ability to represent and safeguard the interests of the conservatee. Nothing in this section shall be construed to prevent the State Department of Mental Health from serving as guardian pursuant to Section 7284, or the function of the conservatorship investigator and conservator being exercised by the same public officer or employee.

When a public guardian is appointed conservator, his official bond and oath as public guardian are in lieu of the conservator's bond and oath on the grant of letters of conservatorship. No bond shall be required of any other public officer or employee appointed to serve as conservator.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1970, c. 566, p. 1138, § 2; Stats.1971, c. 1593, p. 3343, § 378.5; Stats.1971, c. 955, p. 1861, § 10; Stats.1973, c. 142, p. 417, § 71, eff. June 30, 1973, operative July 1, 1973; Stats.1974, c. 1060, p. 2284, § 9; Stats.1977, c. 1252, p. 4577, § 574, operative July 1, 1978.)

§ 5356. Investigation report; recommendations; agreement to serve as conservator

The report of the officer providing conservatorship investigation shall contain his or her recommendations concerning the powers to be granted to, and the duties to be imposed upon the conservator, the legal disabilities to be imposed upon the conservatee, and the proper placement for the conservatee pursuant to Section 5358. Except as provided in this section, the report to the court shall also contain an agreement signed by the person or agency recommended to serve as conservator certifying that the person or agency is able and willing to serve as conservator. The public guardian shall serve as conservator of any person found by a court under this chapter to be gravely disabled, if the court recommends the conservatorship after a conservatorship investigation, and if the court finds that no other person or entity is willing and able to serve as conservator.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1980, c. 681, p. 2066, § 1; Stats.1986, c. 872, § 7.)

§ 5357. Conservator; general and special powers; disability of conservatee

All conservators of the estate shall have the general powers specified in Chapter 6 (commencing with Section 2400) of Part 4 of Division 4 of the Probate Code and shall have the additional powers specified in Article 11 (commencing with Section 2590) of Chapter 6 of Part 4 of Division 4 of the Probate Code as the court may designate. The report shall set forth which, if any, of the additional powers it recommends. The report shall also recommend for or against the imposition of each of the following disabilities on the proposed conservatee:

(a) The privilege of possessing a license to operate a motor vehicle. If the report recommends against this right and if the court follows the recommendation, the agency providing conservatorship investigation shall, upon the appointment of the conservator, so notify the Department of Motor Vehicles.

(b) The right to enter into contracts. The officer may recommend against the person having the right to enter specified types of transactions or transactions in excess of specified money amounts.

(c) The disqualification of the person from voting pursuant to Section 2208 of the Elections Code.

(d) The right to refuse or consent to treatment related specifically to the conservatee's being gravely disabled. The conservatee shall retain all rights specified in Section 5325.

(e) The right to refuse or consent to routine medical treatment unrelated to remedying or preventing the recurrence of the conservatee's being gravely disabled. The court shall make a specific determination regarding imposition of this disability.

(f) The disqualification of the person from possessing a firearm pursuant to subdivision (e) of Section 8103.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1431, § 25, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1976, c. 905, p. 2078, § 1; Stats.1978, c. 1363, p. 4531, § 14; Stats.1979, c. 730, p. 2535, § 147, operative Jan. 1, 1981; Stats.1984, c. 1562, § 3; Stats.1990, c. 180 (S.B.2138), § 1; Stats.1994, c. 923 (S.B.1546), § 268.)

§ 5358. Placement of conservatee; treatment

(a)(1) When ordered by the court after the hearing required by this section, a conservator appointed pursuant to this chapter shall place his or her conservatee as follows:

(A) For a conservatee who is gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008, in the least restrictive alternative placement, as designated by the court.

(B) For a conservatee who is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008, in a placement that achieves the purposes of treatment of the conservatee and protection of the public.

(2) The placement may include a medical, psychiatric, nursing, or other state–licensed facility, or a state hospital, county hospital, hospital operated by the Regents of the University of California, a United States government hospital, or other nonmedical facility approved by the State Department of Mental Health or an agency accredited by the State Department of Mental Health, or in addition to any of the foregoing, in cases of chronic alcoholism, to a county alcoholic treatment center.

(b) A conservator shall also have the right, if specified in the court order, to require his or her conservatee to receive treatment related specifically to remedying or preventing the recurrence of the conservatee's being gravely disabled, or to require his or her conservatee to receive routine medical treatment unrelated to remedying or preventing the recurrence of the conservatee's being gravely disabled. Except in emergency cases in which the conservatee faces loss of life or serious bodily injury, no surgery shall be performed upon the conservatee without the conservatee's prior consent or a court order obtained pursuant to Section 5358.2 specifically authorizing that surgery.

(c)(1) For a conservatee who is gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008, if the conservatee is not to be placed in his or her own home or the home of a relative, first priority shall be to placement in a suitable facility as close as possible to his or her home or the home of a relative. For the purposes of this section, suitable facility means the least restrictive residential placement available and necessary to achieve the purpose of treatment. At the time that the court considers the report of the officer providing conservatorship investigation specified in Section 5356, the court shall consider available placement alternatives. After considering all the evidence the court shall determine the least restrictive and most appropriate alternative placement for the conservatee. The court shall also determine those persons to be notified of a change of placement. The fact that a person for whom conservatorship is recommended is not an inpatient shall not be construed by the court as an indication that the person does not meet the criteria of grave disability.

(2) For a conservatee who is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008, first priority shall be placement in a facility that achieves the purposes of treatment of the conservatee and protection of the public. The court shall determine the most appropriate placement for the conservatee. The court shall also determine those persons to be notified of a change of placement, and additionally require the conservator to notify the district attorney or attorney representing the originating county prior to any change of placement.

(3) For any conservatee, if requested, the local mental health director shall assist the conservator or the court in selecting a placement facility for the conservatee. When a conservatee who is receiving services from the local mental health program is placed, the conservator shall inform the local mental health director of the facility's location and any movement of the conservatee to another facility.

(d)(1) Except for a conservatee who is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008, the conservator may transfer his or her conservatee to a less restrictive alternative placement without a further hearing and court approval. In any case in which a conservator has reasonable cause to believe that his or her conservatee is in need of immediate more restrictive placement because the condition of the conservatee has so changed that the conservatee poses an immediate and substantial danger to himself or herself or others, the conservator shall have the right to place his or her conservatee in a more restrictive facility or hospital. Notwithstanding Section 5328, if the change of placement is to a placement more restrictive than the court–determined placement, the conservator shall provide written notice of the change of placement and the reason therefor to the court, the conservatee's attorney, the county patient's rights advocate and any other persons designated by the court pursuant to subdivision (c).

(2) For a conservatee who is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008, the conservator may not transfer his or her conservatee without providing written notice of the proposed change of placement and the reason therefor to the court, the conservatee's attorney, the county patient's rights advocate, the district attorney of the county that made the commitment, and any other persons designated by the court to receive notice. If any person designated to receive notice objects to the proposed transfer within 10 days after receiving notice, the matter shall be set for a further hearing and court approval. The notification and hearing is not required for the transfer of persons between state hospitals.

(3) At a hearing where the conservator is seeking placement to a less restrictive alternative placement pursuant to paragraph (2), the placement shall not be approved where it is determined by a preponderance of the evidence that the placement poses a threat to the safety of the public, the conservatee, or any other individual.

(4) A hearing as to placement to a less restrictive alternative placement, whether requested pursuant to paragraph (2) or pursuant to Section 5358.3, shall be granted no more frequently than is provided for in Section 5358.3.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2661, § 54, operative July 1, 1969; Stats.1971, c. 1593, p. 3343, § 379, operative July 1, 1973; Stats.1973, c. 523, p. 1011, § 1; Stats.1976, c. 905, p. 2078, § 2; Stats.1977, c. 1252, p. 4576, § 575, operative July 1, 1978; Stats.1980, c. 681, p. 2067, § 2; Stats.1986, c. 872, § 8; Stats.1990, c. 180 (S.B.2138), § 2; Stats.1995, c. 593 (A.B.145), § 4.)

§ 5358.1. Nonliability of conservator, public guardian or peace officer for action by conservatee

Neither a conservator, temporary conservator, or public guardian appointed pursuant to this chapter, nor a peace officer acting pursuant to Section 5358.5, shall be held civilly or criminally liable for any action by a conservatee.

(Added by Stats.1972, c. 574, p. 982, § 5.)

§ 5358.2. Medical treatment of conservatee; court order; emergencies

If a conservatee requires medical treatment and the conservator has not been specifically authorized by the court to require the conservatee to receive medical treatment, the conservator shall, after notice to the conservatee, obtain a court order for that medical treatment, except in emergency cases in which the conservatee faces loss of life or serious bodily injury. The conservatee, if he or she chooses to contest the request for a court order, may petition the court for hearing which shall be held prior to granting the order.

(Added by Stats.1976, c. 905, p. 2079, § 3. Amended by Stats.1990, c. 180 (S.B.2138), § 3.)

§ 5358.3. Petition to contest rights denied conservatee or powers granted conservator; subsequent petitions; voting rights

At any time, a conservatee or any person on his behalf with the consent of the conservatee or his counsel, may petition the court for

a hearing to contest the rights denied under Section 5357 or the powers granted to the conservator under Section 5358. However, after the filing of the first petition for hearing pursuant to this section, no further petition for rehearing shall be submitted for a period of six months.

A request for hearing pursuant to this section shall not affect the right of a conservatee to petition the court for a rehearing as to his status as a conservatee pursuant to Section 5364. A hearing pursuant to this section shall not include trial by jury. If a person's right to vote is restored, the court shall so notify the county elections official pursuant to subdivision (c) of Section 2210 of the Elections Code.
(Added by Stats.1976, c. 905, p. 2079, § 4. Amended by Stats.1978, c. 1363, p. 4531, § 15; Stats.1994, c. 923 (S.B.1546), § 269.)

§ 5358.5. Conservatee leaving facility without approval; return to facility or removal to county designated treatment facility; request to peace officer

When any conservatee placed into a facility pursuant to this chapter leaves the facility without the approval of the conservator or the person in charge of the facility, or when the conservator appointed pursuant to this chapter deems it necessary to remove his conservatee to the county designated treatment facility, the conservator may take the conservatee into custody and return him to the facility or remove him to the county designated treatment facility. A conservator, at his discretion, may request a peace officer to detain the conservatee and return such person to the facility in which he was placed or to transfer such person to the county designated treatment facility, pursuant to Section 7325 of the Welfare and Institutions Code. Such request shall be in writing and accompanied by a certified copy of the letters of conservatorship showing the person requesting detention and transfer to be the conservator appointed pursuant to this chapter as conservator of the person sought to be detained. Either the conservator or his assistant or deputy may request detention under this section. Whenever possible, persons charged with apprehension of persons pursuant to this section shall dress in plain clothes and shall travel in unmarked vehicles.
(Added by Stats.1972, c. 574, p. 982, § 6. Amended by Stats.1974, c. 833, p. 1796, § 2.)

§ 5358.6. Outpatient treatment for conservatee; agreement of person in charge of facility; progress report

Any conservator who places his or her conservatee in an inpatient facility pursuant to Section 5358, may also require the conservatee to undergo outpatient treatment. Before doing so, the conservator shall obtain the agreement of the person in charge of a mental health facility that the conservatee will receive outpatient treatment and that the person in charge of the facility will designate a person to be the outpatient supervisor of the conservatee. The person in charge of these facilities shall notify the county mental health director or his or her designee of such agreement. At 90–day intervals following the commencement of the outpatient treatment, the outpatient supervisor shall make a report in writing to the conservator and to the person in charge of the mental health facility setting forth the status and progress of the conservatee.
(Added by Stats.1975, c. 960, p. 2244, § 6. Amended by Stats.1980, c. 681, p. 2067, § 3.)

§ 5358.7. Challenge by conservatee of placement or conditions of confinement; place of judicial review; place of return upon release

When any conservatee challenges his or her placement or conditions of confinement pursuant to Section 1473 of the Penal Code or Section 7250 of the Welfare and Institutions Code, notwithstanding the continuing jurisdiction of the court which appointed the conservators, judicial review shall be in the county where the conservatorship was established or in the county in which the conservatee is placed or confined. If the conservatee is released as a result of the hearing, he or she shall be returned to the county where the conservatorship originated.
(Added by Stats.1986, c. 226, § 1.)

§ 5359. Alternative placement

A conservator appointed under this chapter shall find alternative placement for his conservatee within seven days after he is notified by the person in charge of the facility serving the conservatee that the conservatee no longer needs the care or treatment offered by that facility.

If unusual conditions or circumstances preclude alternative placement of the conservatee within seven days, the conservator shall find such placement within 30 days.

If alternative placement cannot be found at the end of the 30–day period the conservator shall confer with the professional person in charge of the facility and they shall then determine the earliest practicable date when such alternative placement may be obtained.
(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2662, § 55, operative July 1, 1969; Stats.1980, c. 676, p. 2039, § 336.)

§ 5360. Recommendations of officer providing conservatorship investigation

The officer providing conservatorship investigation shall recommend, in his report to the court, for or against imposition of a disability set forth in Section 5357 on the basis of the determination of the professional person who recommended conservatorship pursuant to Section 5352.

The officer providing conservatorship investigation shall recommend in his report any of the additional powers of a conservator set forth in Section 2591 of the Probate Code if the needs of the individual patient or his estate require such powers. In making such determination, the officer providing conservatorship investigation shall consult with the professional person who recommended conservatorship pursuant to Section 5352.
(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1432, § 27, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1979, c. 730, p. 2535, § 148, operative Jan. 1, 1981.)

§ 5361. Termination; power and authority over estate; reappointment; opinion of physicians or psychologists; release or detention of conservatee

Conservatorship initiated pursuant to this chapter shall automatically terminate one year after the appointment of the conservator by the superior court. The period of service of a temporary conservator shall not be included in the one–year period. Where the conservator has been appointed as conservator of the estate, the conservator shall, for a reasonable time, continue to have such power and authority over the estate as the superior court, on petition by the conservator, may deem necessary for (1) the collection of assets or income which accrued during the period of conservatorship, but were uncollected before the date of termination, (2) the payment of expenses which accrued during period of conservatorship and of which the conservator was notified prior to termination, but were unpaid before the date of termination, and (3) the completion of sales of real property where the only act remaining at the date of termination is the actual transfer of title. If upon the termination of an initial or a succeeding period of conservatorship the conservator determines that conservatorship is still required, he may petition the superior court for his reappointment as conservator for a succeeding one–year period. The petition must include the opinion of two physicians or licensed psychologists who have a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders that the conservatee is still gravely disabled as a result of mental disorder or impairment by chronic alcoholism. In the event that the conservator is unable to obtain the opinion of two physicians or psychologists, he shall request that the court appoint them.

Any facility in which a conservatee is placed must release the

conservatee at his request when the conservatorship terminates. A petition for reappointment filed by the conservator or a petition for appointment filed by a public guardian shall be transmitted to the facility at least 30 days before the automatic termination date. The facility may detain the conservatee after the end of the termination date only if the conservatorship proceedings have not been completed and the court orders the conservatee to be held until the proceedings have been completed.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2662, § 56, operative July 1, 1969; Stats.1969, c. 722, p. 1432, § 28, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1976, c. 110, p. 171, § 1, eff. April 9, 1976; Stats.1978, c. 1294, p. 4246, § 8; Stats.1979, c. 245, p. 534, § 2.)

§ 5362. Notice of impending termination; petition for reappointment; court hearing or jury trial; decree of termination

(a) The clerk of the superior court shall notify each conservator, his or her conservatee and the person in charge of the facility in which the person resides, and the conservatee's attorney, at least 60 days before the termination of the one–year period. If the conservator is a private party, the clerk of the superior court shall also notify the mental health director and the county officer providing conservatorship investigation pursuant to Section 5355, at least 60 days before the termination of the one–year period. Notification shall be given in person or by first–class mail. The notification shall be in substantially the following form:

In the Superior Court of the State of California
for the County of _____

The people of the state of California No.____
Concerning Notice of Termination
_____ of Conservatorship

The people of the State of California to _____
_____:

(conservatee, conservatee's attorney, conservator, and professional person in charge of the facility in which the conservatee resides, county mental health director, and county officer providing conservatorship investigation.)

The one–year conservatorship established for _____ pursuant to Welfare and Institutions Code Section _____ on ____ will terminate on _____. If the conservator, _____, wishes to reestablish conservatorship for another year he or she must petition the court by _____. Subject to a request for a court hearing by jury trial the judge may, on his or her own motion, accept or reject the conservator's petition.

If the conservator petitions to reestablish conservatorship the conservatee, the professional person in charge of the facility in which he or she resides, the conservatee's attorney, and, if the conservator is a private party, the county mental health director and the county officer providing conservatorship investigation shall be notified. If any of them request it, there shall be a court hearing or a jury trial, whichever is requested, on the issue of whether the conservatee is still gravely disabled and in need of conservatorship. If the private conservator does not petition for reappointment, the county officer providing conservatorship investigation may recommend another conservator. Such a petition shall be considered a petition for reappointment as conservator.

Clerk of the Superior Court by

_____
Deputy

(b) Subject to a request for a court hearing or jury trial, the judge may, on his or her own motion, accept or reject the conservator's petition.

If the conservator does not petition to reestablish conservatorship at or before the termination of the one–year period, the court shall issue a decree terminating conservatorship. The decree shall be sent to the conservator and his or her conservatee by first–class mail and shall be accompanied by a statement of California law as set forth in Section 5368.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2662, § 56.5, operative July 1, 1969; Stats.1969, c. 722, p. 1432, § 28.1, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1978, c. 1294, p. 4246, § 9; Stats.1982, c. 1598, § 8; Stats.1983, c. 464, § 4; Stats.1985, c. 1239, § 5.)

§ 5363. Ratification of acts beyond term

In the event the conservator continues in good faith to act within the powers granted him in the original decree of conservatorship beyond the one–year period, he may petition for and shall be granted a decree ratifying his acts as conservator beyond the one–year period. The decree shall provide for a retroactive appointment of the conservator to provide continuity of authority in those cases where the conservator did not apply in time for reappointment.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5364. Petition for rehearing on status as conservatee; notice of voter registration right

At any time, the conservatee may petition the superior court for a rehearing as to his status as a conservatee. However, after the filing of the first petition for rehearing pursuant to this section, no further petition for rehearing shall be submitted for a period of six months. If the conservatorship is terminated pursuant to this section, the court shall, in accordance with subdivision (c) of Section 2210 of the Elections Code, notify the county elections official that the person's right to register to vote is restored.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1976, c. 905, p. 2080, § 5; Stats.1978, c. 1363, p. 4532, § 16; Stats.1994, c. 923 (S.B.1546), § 270.)

§ 5365. Time for hearing petitions; attorney

A hearing shall be held on all petitions under this chapter within 30 days of the date of the petition. The court shall appoint the public defender or other attorney for the conservatee or proposed conservatee within five days after the date of the petition.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1970, c. 509, p. 997, § 1; Stats.1970, c. 1627, p. 3449, § 25; Stats.1971, c. 776, p. 1530, § 7; Stats.1972, c. 574, p. 983, § 7.)

§ 5365.1. Waiver of presence of professionals and physicians; reception of documents

The conservatee or proposed conservatee may, upon advice of counsel, waive the presence at any hearing under this chapter of the physician or other professional person who recommended conservatorship pursuant to Section 5352 and of the physician providing evaluation or intensive treatment. In the event of such a waiver, such physician and professional persons shall not be required to be present at the hearing if it is stipulated that the recommendation and records of such physician or other professional person concerning the mental condition and treatment of the conservatee or proposed conservatee will be received in evidence.

(Added by Stats.1971, c. 1162, p. 2221, § 4.)

§ 5366. Roster of gravely disabled patients; investigation of need for conservatorship

On or before June 30, 1970, the medical director of each state hospital for the mentally disordered shall compile a roster of those mentally disordered or chronic alcoholic patients within the institution who are gravely disabled. The roster shall indicate the county from which each such patient was admitted to the hospital or, if the hospital records indicate that the county of residence of the patient is a different county, the county of residence. The officer providing conservatorship investigation for each county shall be given a copy of the names and pertinent records of the patients from that county and shall investigate the need for conservatorship for such patients as provided in this chapter. After his investigation and on or

before July 1, 1972, the county officer providing conservatorship shall file a petition of conservatorship for such patients that he determines may need conservatorship. Court commitments under the provisions of law in effect prior to July 1, 1969, of such patients for whom a petition of conservatorship is not filed shall terminate and the patient shall be released unless he agrees to accept treatment on a voluntary basis.

Each state hospital and the State Department of Mental Health shall make their records concerning such patients available to the officer providing conservatorship investigation.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2663, § 57; Stats.1969, c. 722, p. 1433, § 29, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1970, c. 1627, p. 3449, § 26; Stats.1971, c. 1593, p. 3343, § 380; Stats.1971, c. 242, p. 371, § 1, eff. June 30, 1971; Stats.1973, c. 142, p. 417, § 72, eff. June 30, 1973, operative July 1, 1973; Stats.1977, c. 1252, p. 4578, § 576, operative July 1, 1978.)

§ 5366.1. Detention for evaluation; persons detained under court commitment or upon application of local health officer; disposition

Any person detained as of June 30, 1969, under court commitment, in a private institution, a county psychiatric hospital, facility of the Veterans Administration, or other agency of the United States government, community mental health service, or detained in a state hospital or facility of the Veterans Administration upon application of a local health officer, pursuant to former Section 5567 or Sections 6000 to 6019, inclusive, as they read immediately preceding July 1, 1969, may be detained, after January 1, 1972, for a period no longer than 180 days, except as provided in this section.

Any person detained pursuant to this section on the effective date of this section shall be evaluated by the facility designated by the county and approved by the State Department of Mental Health pursuant to Section 5150 as a facility for 72–hour treatment and evaluation. Such evaluation shall be made at the request of the person in charge of the institution in which the person is detained. If in the opinion of the professional person in charge of the evaluation and treatment facility or his designee, the evaluation of the person can be made by such professional person or his designee at the institution in which the person is detained, the person shall not be required to be evaluated at the evaluation and treatment facility, but shall be evaluated at the institution where he is detained, or other place to determine if the person is a danger to others, himself, or gravely disabled as a result of mental disorder.

Any person evaluated under this section shall be released from the institution in which he is detained immediately upon completion of the evaluation if in the opinion of the professional person in charge of the evaluation and treatment facility, or his designee, the person evaluated is not a danger to others, or to himself, or gravely disabled as a result of mental disorder, unless the person agrees voluntarily to remain in the institution in which he has been detained.

If in the opinion of the professional person in charge of the facility or his designee, the person evaluated requires intensive treatment or recommendation for conservatorship, such professional person or his designee shall proceed under Article 4 (commencing with Section 5250) of Chapter 2, or under Chapter 3 (commencing with Section 5350), of Part 1 of Division 5.

If it is determined from the evaluation that the person is gravely disabled and a recommendation for conservatorship is made, and if the petition for conservatorship for such person is not filed by June 30, 1972, the court commitment or detention under a local health officer application for such person shall terminate and the patient shall be released unless he agrees to accept treatment on a voluntary basis.

(Added by Stats.1971, c. 1459, p. 2875, § 2. Amended by Stats.1973, c. 142, p. 418, § 72.5, eff. June 30, 1973, operative July 1, 1973; Stats.1977, c. 1252, p. 4578, § 577, operative July 1, 1978.)

§ 5367. Effect of conservatorship on prior commitment

Conservatorship established under this chapter shall supersede any commitment under former provisions of this code relating to inebriates or the mentally ill.

(Added by Stats.1967, c. 1667, p. 4075, § 36, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2664, § 58, operative July 1, 1969.)

§ 5368. Effect of conservatorship on presumption of competence

A person who is no longer a conservatee shall not be presumed to be incompetent by virtue of his having been a conservatee under the provisions of this part.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969.)

§ 5369. Conservatee with criminal charges pending; recovery of competence

When a conservatee who has criminal charges pending against him and has been found mentally incompetent under Section 1370 of the Penal Code recovers his mental competence, the conservator shall certify that fact to the court, sheriff, and district attorney of the county in which the criminal charges are pending and to the defendant's attorney of record.

The court shall order the sheriff to immediately return the defendant to the court in which the criminal charges are pending. Within two judicial days of the defendant's return, the court shall hold a hearing to determine whether the defendant is entitled to be admitted to bail or released upon his own recognizance pending conclusion of criminal proceedings.

(Added by Stats.1974, c. 1511, p. 3323, § 13, eff. Sept. 27, 1974.)

§ 5370. Conservatorship proceeding for one charged with offense

Notwithstanding any other provision of law, a conservatorship proceeding may be initiated pursuant to this chapter for any person who has been charged with an offense, regardless of whether action is pending or has been initiated pursuant to Section 1370 of the Penal Code.

(Added by Stats.1974, c. 1511, p. 3323, § 14, eff. Sept. 27, 1974.)

§ 5370.1. Appointment of counsel for private conservator with insufficient funds

The court in which a petition to establish a conservatorship is filed may appoint the county counsel or a private attorney to represent a private conservator in all proceedings connected with the conservatorship, if it appears that the conservator has insufficient funds to obtain the services of a private attorney. Such appointments of the county counsel, however, may be made only if the board of supervisors have, by ordinance or resolution, authorized the county counsel to accept them.

(Added by Stats.1975, c. 960, p. 2245, § 8. Amended by Stats.1980, c. 415, p. 818, § 1.)

§ 5370.2. Protection and advocacy agency; services to be provided under contract; coordination with the advocates; plan to provide patients' rights advocacy services; reviews and investigations

(a) Beginning January 1, 1996, the State Department of Mental Health shall contract with a single nonprofit agency that meets the criteria specified in subdivision (b) of Section 5510 to conduct the following activities:

(1) Provide patients' rights advocacy services for, and conduct investigations of alleged or suspected abuse and neglect of, including deaths of, persons with mental disabilities residing in state hospitals.

(2) Investigate and take action as appropriate and necessary to resolve complaints from or concerning recipients of mental health services residing in licensed health or community care facilities regarding abuse, and unreasonable denial, or punitive withholding of rights guaranteed under this division that cannot be resolved by county patients' rights advocates.

(3) Provide consultation, technical assistance, and support to county patients' rights advocates in accordance with their duties under Section 5520.

(4) Conduct program review of patients' rights programs.

(b) The services shall be provided in coordination with the appropriate mental health patients' rights advocates.

(c)(1) The contractor shall develop a plan to provide patients' rights advocacy services for, and conduct investigations of alleged or suspected abuse and neglect of, including the deaths of, persons with mental disabilities residing in state hospitals.

(2) The contractor shall develop the plan in consultation with the statewide organization of mental health patients' rights advocates, the statewide organization of mental health clients, and the statewide organization of family members of persons with mental disabilities, and the statewide organization of county mental health directors.

(3) In order to ensure that persons with mental disabilities have access to high quality advocacy services, the contractor shall establish a grievance procedure and shall advise persons receiving services under the contract of the availability of other advocacy services, including services provided by the protection and advocacy agency specified in Section 4901 and the county patients' rights advocates specified in Section 5520.

(d) Nothing contained in this section shall be construed to restrict or limit the authority of the department to conduct the reviews and investigations it deems necessary for personnel, criminal, and litigation purposes.

(e) The State Department of Mental Health shall contract on a multiyear basis for a contract term of up to three years.

(Added by Stats.1992, c. 722 (S.B.485), § 25, eff. Sept. 15, 1992. Amended by Stats.1995, c. 546 (S.B.361), § 2.)

§ 5371. Conflict of interest in evaluation of conservatee; independent conduct of investigation and administration of conservatorship

No person upon whom a duty is placed to evaluate, or who, in fact, does evaluate a conservatee for any purpose under this chapter shall have a financial or other beneficial interest in the facility where the conservatee is to be, or has been placed.

Conservatorship investigation and administration shall be conducted independently from any person or agency which provides mental health treatment for conservatees, if it has been demonstrated that the existing arrangement creates a conflict of interest between the treatment needs of the conservatee and the investigation or administration of the conservatorship. The person or agency responsible for the mental health treatment of conservatees shall execute a written agreement or protocol with the conservatorship investigator and administrator for the provision of services to conservatees. The agreement or protocol shall specify the responsibilities of each person or agency who is a party to the agreement or protocol, and shall specify a procedure to resolve disputes or conflicts of interest between agencies or persons.

(Added by Stats.1975, c. 960, p. 2245, § 9. Amended by Stats.1986, c. 335, § 2.)

Chapter 4 ADMINISTRATION

§ 5400. Director; administrative duties; rules and regulations

The Director of Mental Health shall administer this part and shall adopt rules, regulations and standards as necessary. In developing rules, regulations, and standards, the Director of Mental Health shall consult with the California Conference of Local Mental Health Directors, the California Council on Mental Health, and the office of the Attorney General. Adoption of such standards, rules and regulations shall require approval by the California Conference of Local Mental Health Directors by majority vote of those present at an official session.

Wherever feasible and appropriate, rules, regulations and standards adopted under this part shall correspond to comparable rules, regulations, and standards adopted under the Short–Doyle Act. Such corresponding rules, regulations, and standards shall include qualifications for professional personnel.

Regulations adopted pursuant to this part may provide standards for services for chronic alcoholics which differ from the standards for services for the mentally disordered.

(Added by Stats.1967, c. 1667, p. 4074, § 36, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1432, § 30, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1971, c. 1593, p. 3344, § 381, operative July 1, 1973; Stats.1977, c. 1252, p. 4579, § 579, operative July 1, 1978; Stats.1985, c. 1232, § 22, eff. Sept. 30, 1985.)

§ 5402. Report of operation of division

(a) The State Department of Mental Health shall collect and publish annually quantitative information concerning the operation of this division including the number of persons admitted for 72–hour evaluation and treatment, 14–day and 30–day periods of intensive treatment, and 180–day postcertification intensive treatment, the number of persons transferred to mental health facilities pursuant to Section 4011.6 of the Penal Code, the number of persons for whom temporary conservatorships are established, and the number of persons for whom conservatorships are established in each county.

(b) Each local mental health director, and each facility providing services to persons pursuant to this division, shall provide the department, upon its request, with any information, records, and reports which the department deems necessary for the purposes of this section. The department shall not have access to any patient name identifiers.

(c) Information published pursuant to this section shall not contain patient name identifiers and shall contain statistical data only.

(d) The department shall make the reports available to medical, legal, and other professional groups involved in the implementation of this division.

(Added by Stats.1975, c. 960, p. 2245, § 10. Amended by Stats.1977, c. 1252, p. 4580, § 581, operative July 1, 1978; Stats.1988, c. 1517, § 14; Stats.1991, c. 89 (A.B.1288), § 52, eff. June 30, 1991; Stats.1991, c. 611 (A.B.1491), § 33, eff. Oct. 7, 1991.)

§ 5402.2. Master plan for utilization of state hospital facilities; levels of care

The Director of Mental Health shall develop a master plan for the utilization of state hospital facilities identifying levels of care. The level of care shall be either general acute care, skilled nursing care, subacute, intermediate care, or residential care.

(Added by Stats.1988, c. 1517, § 15.)

§ 5403. Regulations; approval by California Conference of Local Mental Health Directors

(a) From July 1, 1991 to June 30, 1993, inclusive, regulations promulgated by the department shall not be subject to the approval of the California Conference of Local Mental Health Directors. The impact of this subdivision on regulatory timing shall be included in the department's report to the Legislature on September 30, 1992.

(b) The department shall continue to involve the conference in the development of all regulations which affect local mental health programs prior to the promulgation of those regulations pursuant to the Administrative Procedure Act.

(Added by Stats.1991, c. 89 (A.B.1288), § 55, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 34, eff. Oct. 7, 1991.)

§ 5404. Designation of evaluation and treatment facilities; encouragement of use

Each county may designate facilities, which are not hospitals or clinics, as 72–hour evaluation and treatment facilities and as 14–day intensive treatment facilities if such facilities meet such requirements as the Director of Mental Health shall establish by regulation. The Director of Mental Health shall encourage the use by counties of appropriate facilities, which are not hospitals or clinics, for the evaluation and treatment of patients pursuant to this part.

(Added by Stats.1975, c. 960, p. 2245, § 11. Amended by Stats.1977, c. 1252, p. 4581, § 584, operative July 1, 1978.)

§ 5405. Facilities licensed after January 1, 2003; criminal record checks; denial, suspension or revocation of license for certain criminal offenses; additional considerations; director review

(a) This section shall apply to each facility licensed by the State Department of Mental Health, or its delegated agent, on or after January 1, 2003. For purposes of this section, "facility" includes psychiatric health facilities, as defined in Section 1250.2 of the Health and Safety Code, licensed pursuant to Chapter 9 (commencing with Section 77001) of Division 5 of Title 22 of the California Code of Regulations and mental health rehabilitation centers licensed pursuant to Chapter 3.5 (commencing with Section 781.00) of Division 1 of Title 9 of the California Code of Regulations.

(b)(1)(A) Prior to the initial licensure or first renewal of a license on or after January 1, 2003, of any person to operate or manage a facility specified in subdivision (a), the department shall submit fingerprint images and related information pertaining to the applicant or licensee to the Department of Justice for purposes of a criminal record check, as specified in paragraph (2), at the expense of the applicant or licensee. The Department of Justice shall provide the results of the criminal record check to the department. The department shall determine whether the applicant or licensee has ever been convicted of a crime specified in subdivision (c). The department shall submit fingerprint images and related information each time the position of administrator, manager, program director, or fiscal officer of a facility is filled and prior to actual employment for initial licensure or an individual who is initially hired on or after January 1, 2003. For purposes of this subdivision, "applicant" and "licensee" include the administrator, manager, program director, or fiscal officer of a facility.

(B) Commencing January 1, 2003, upon the employment of any direct care staff the department shall submit fingerprint images and related information pertaining to the direct care staff person to the Department of Justice for purposes of a criminal record check, as specified in paragraph (2), at the expense of the direct care staff person or licensee. The Department of Justice shall provide the results of the criminal record check to the department. The department shall determine whether the direct care staff person has ever been convicted of a crime specified in subdivision (c). The department shall notify the licensee of these results.

(C) Commencing January 1, 2003, any contract for services provided directly to patients or residents shall contain provisions to ensure that the direct services contractor submits to the department fingerprint images and related information pertaining to the direct services contractor for submission to the Department of Justice for purposes of a criminal record check, as specified in paragraph (2), at the expense of the direct services contractor or licensee. The Department of Justice shall provide the results of the criminal record check to the department. The department shall determine whether the direct services contractor has ever been convicted of a crime specified in subdivision (c). The department shall notify the licensee of these results.

(2) If the applicant, licensee, direct care staff person, or direct services contractor specified in paragraph (1) has resided in California for at least the previous seven years, the department shall only require the submission of one set of fingerprint images and related information. The Department of Justice shall charge a fee sufficient to cover the reasonable cost of processing the fingerprint submission. Fingerprints submitted pursuant to this subdivision include fingerprints taken by the use of live scan technology. When requested, the Department of Justice shall forward one set of fingerprint images to the Federal Bureau of Investigation for the purpose of obtaining any record of previous convictions or arrests pending adjudication of the applicant, licensee, direct care staff person, or direct services contractor. The results of a criminal record check provided by the Department of Justice shall contain every conviction rendered against an applicant, licensee, direct care staff person, or direct services contractor, and every offense for which the applicant, licensee, direct care staff person, or direct services contractor is presently awaiting trial, whether the person is incarcerated or has been released on bail or on his or her own recognizance pending trial. The department shall request subsequent arrest notification from the Department of Justice pursuant to Section 11105. 2 of the Penal Code.

(c)(1) The department shall deny any application for any license, suspend or revoke any existing license, and disapprove or revoke any employment or contract for direct services, if the applicant, licensee, employee, or direct services contractor has been convicted of, or incarcerated for, a felony defined in subdivision (c) of Section 667.5 of, or subdivision (c) of Section 1192.7 of, the Penal Code, within the preceding 10 years.

(2) The application for licensure or renewal of any license shall be denied, and any employment or contract to provide direct services shall be disapproved or revoked, if the criminal record of the person includes a conviction in another jurisdiction for an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses referred to in paragraph (1).

(d)(1) The department may approve an application for, or renewal of, a license, or continue any employment or contract for direct services, if the person has been convicted of a misdemeanor offense that is not a crime upon the person of another, the nature of which has no bearing upon the duties for which the person will perform as a licensee, direct care staff person, or direct services contractor. In determining whether to approve the application, employment, or contract for direct services, the department shall take into consideration the factors enumerated in paragraph (2).

(2) Notwithstanding subdivision (c), if the criminal record of a person indicates any conviction other than a minor traffic violation, the department may deny the application for license or renewal, and may disapprove or revoke any employment or contract for direct services. In determining whether or not to deny the application for licensure or renewal, or to disapprove or revoke any employment or contract for direct services, the department shall take into consideration the following factors:

(A) The nature and seriousness of the offense under consideration and its relationship to the person's employment, duties, and responsibilities.

(B) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.

(C) The time that has elapsed since the commission of the conduct or offense and the number of offenses.

(D) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against the person.

(E) Any rehabilitation evidence, including character references, submitted by the person.

(F) Employment history and current employer recommendations.

(G) Circumstances surrounding the commission of the offense that would demonstrate the unlikelihood of repetition.

(H) The granting by the Governor of a full and unconditional pardon.

(I) A certificate of rehabilitation from a superior court.

(e) Denial, suspension, or revocation of a license, or disapproval or revocation of any employment or contract for direct services specified in subdivision (c) and paragraph (2) of subdivision (d) are not subject to appeal, except as provided in subdivision (f).

(f) After a review of the record, the director may grant an exemption from denial, suspension, or revocation of any license, or disapproval of any employment or contract for direct services, if the crime for which the person was convicted was a property crime that did not involve injury to any person and the director has substantial and convincing evidence to support a reasonable belief that the person

is of such good character as to justify issuance or renewal of the license or approval of the employment or contract.

(g) A plea or verdict of guilty, or a conviction following a plea of nolo contendere shall be deemed a conviction within the meaning of this section. The department may deny any application, or deny, suspend, or revoke a license, or disapprove or revoke any employment or contract for direct services based on a conviction specified in subdivision (c) when the judgment of conviction is entered or when an order granting probation is made suspending the imposition of sentence.

(h)(1) For purposes of this section, "direct care staff" means any person who is an employee, contractor, or volunteer who has contact with other patients or residents in the provision of services. Administrative and licensed personnel shall be considered direct care staff when directly providing program services to participants.

(2) An additional background check shall not be required pursuant to this section if the direct care staff or licensee has received a prior criminal history background check while working in a mental health rehabilitation center or psychiatric health facility licensed by the department, and provided the department has maintained continuous subsequent arrest notification on the individual from the Department of Justice since the prior criminal background check was initiated.

(3) When an application is denied on the basis of a conviction pursuant to this section, the department shall provide the individual whose application was denied with notice, in writing, of the specific grounds for the proposed denial.

(Added by Stats.2002, c. 642 (A.B.1454), § 1. Amended by Stats.2003, c. 62 (S.B.600), § 327.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

Former Chapter 6, Mental Health Advocacy, was renumbered Chapter 6.2 and amended by Stats.1986, c. 248, § 251. See Welfare and Institutions Code § 5500 et seq.

Chapter 6.2 MENTAL HEALTH ADVOCACY

Article 1 GENERAL PROVISIONS

§ 5500. Definitions

As used in this chapter:

(a) "Advocacy" means those activities undertaken on behalf of persons who are receiving or have received mental health services to protect their rights or to secure or upgrade treatment or other services to which they are entitled.

(b) "Mental health client" or "client" means any person who is receiving or has received services from a mental health facility, service or program and who has personally or through a guardian ad litem, entered into an agreement with a county patients' rights advocate for the provision of advocacy services.

(c) "Mental health facilities, services, or programs" means any publicly operated or supported mental health facility or program; any private facility or program licensed or operated for health purposes providing services to mentally disordered persons; and publicly supported agencies providing other than mental health services to mentally disordered clients.

(d) "Independent of providers of service" means that the advocate has no direct or indirect clinical or administrative responsibility for any recipient of mental health services in any mental health facility, program, or service for which he or she performs advocacy activities.

(e) "County patients' rights advocate" means any advocate appointed, or whose services are contracted for, by a local mental health director.

(Added by Stats.1981, c. 841, p. 3237, § 7.)

Article 2 PATIENTS' RIGHTS OFFICE

§ 5510. Legislative findings and declarations; legislative intent

(a) The Legislature finds and declares as follows:

(1) The State of California accepts its responsibility to ensure and uphold the right of persons with mental disabilities and an obligation, to be executed by the State Department of Mental Health, to ensure that mental health laws, regulations and policies on the rights of recipients of mental health services are observed and protected in state hospitals and in licensed health and community care facilities.

(2) Persons with mental disabilities are vulnerable to abuse, neglect, and unreasonable and unlawful deprivations of their rights.

(3) Patients' rights advocacy and investigative services concerning patient abuse and neglect currently provided by the State Department of Mental Health, including the department's Office of Human Rights and investigator, and state hospital patients' rights advocates and state hospital investigators may have conflicts of interest or the appearance of a conflict of interest.

(4) The services provided to patients and their families is of such a special and unique nature that they must be contracted out pursuant to paragraph (3) of subdivision (b) of Section 19130 of the Government Code.

(b) Therefore, to avoid the potential for a conflict of interest or the appearance of a conflict of interest, it is the intent of the Legislature that the patients' rights advocacy and investigative services described in this article be provided by a single contractor specified in Section 5370.2 that meets both of the following criteria:

(1) The contractor can demonstrate the capability to provide statewide advocacy services for persons with mental disabilities.

(2) The contractor has no direct or indirect responsibility for providing services to persons with mental disabilities, except advocacy services.

(c) For the purposes of this article, the Legislature further finds and declares, because of a potential conflict of interest or the appearance of a conflict of interest, that the goals and purposes of the state patients' rights advocacy and investigative services cannot be accomplished through the utilization of persons selected pursuant to the regular state civil service system. Accordingly, the contracts into which the department enters pursuant to this section are permitted and authorized by paragraphs (3) and (5) of subdivision (b) of Section 19130 of the Government Code. The State Department of Mental Health shall contract with a single nonprofit entity to provide for the protection and advocacy services to persons with mental disabilities. The entity shall be responsible for ensuring that mental health laws, regulations, and policies on the rights of recipients of mental health services are observed in state hospitals and in licensed health and community care facilities.

(d) The findings and declarations of potential conflict of interest provided in this section shall not apply to advocacy services provided under Article 3 (commencing with Section 5520).

(Added by Stats.1981, c. 841, p. 3237, § 7. Amended by Stats.1992, c. 722 (S.B.485), § 26, eff. Sept. 15, 1992; Stats.1995, c. 546 (S.B.361), § 3.)

§ 5511. Contracts with independent persons or agencies for services in state hospitals

The Director of Mental Health or the executive director of each state hospital serving mentally disordered persons may contract with independent persons or agencies to perform patients' rights advocacy services in state hospitals.

(Added by Stats.1981, c. 841, p. 3237, § 7.)

§ 5512. Training for county patients' rights advocates

Training of county patients' rights advocates shall be provided by the contractor specified in Section 5510 responsible for the provision of protection and advocacy services to persons with mental disabilities. Training shall be directed at ensuring that all county patients' rights advocates possess:

(a) Knowledge of the service system, financial entitlements, and service rights of persons receiving mental health services. This knowledge shall include, but need not be limited to, knowledge of available treatment and service resources in order to ensure timely access to treatment and services.

(b) Knowledge of patients' rights in institutional and community facilities.

(c) Knowledge of civil commitment statutes and procedures.

(d) Knowledge of state and federal laws and regulations affecting recipients of mental health services.

(e) Ability to work effectively and respectfully with service recipients and providers, public administrators, community groups, and the judicial system.

(f) Skill in interviewing and counseling service recipients, including giving information and appropriate referrals.

(g) Ability to investigate and assess complaints and screen for legal problems.

(h) Knowledge of administrative and judicial due process proceedings in order to provide representation at administrative hearings and to assist in judicial hearings when necessary to carry out the intent of Section 5522 regarding cooperation between advocates and legal representatives.

(i) Knowledge of, and commitment to, advocacy ethics and principles.

(j) This section shall become operative on January 1, 1996.

(Added by Stats.1992, c. 722 (S.B.485), § 29, eff. Sept. 15, 1992, operative Jan. 1, 1996. Amended by Stats.1995, c. 546 (S.B.361), § 6.)

§ 5513. Liaison between county patients' rights advocates and state department of mental health

The Patients' Rights Office shall serve as a liaison between county patients' rights advocates and the State Department of Mental Health.

(Added by Stats.1981, c. 841, p. 3238, § 7.)

§ 5514. Patients' rights subcommittee of council on mental health

There shall be a five–person Patients' Rights Subcommittee of the California Council on Mental Health. This subcommittee, supplemented by two ad hoc members appointed by the chairperson of the subcommittee, shall advise the Director of Mental Health regarding department policies and practices that affect patients' rights. The subcommittee shall also review the advocacy and patients' rights components of each county Short–Doyle plan and advise the Director of Mental Health concerning the adequacy of each plan in protecting patients' rights. The ad hoc members of the subcommittee shall be persons with substantial experience in establishing and providing independent advocacy services to recipients of mental health services.

(Added by Stats.1981, c. 841, p. 3238, § 7. Amended by Stats.1985, c. 1232, § 23, eff. Sept. 30, 1985.)

Article 3 COUNTY ADVOCATES

§ 5520. Appointments or contracts for services; duties

Each local mental health director shall appoint, or contract for the services of, one or more county patients' rights advocates. The duties of these advocates shall include, but not be limited to, the following:

(a) To receive and investigate complaints from or concerning recipients of mental health services residing in licensed health or community care facilities regarding abuse, unreasonable denial or punitive withholding of rights guaranteed under the provisions of Division 5 (commencing with Section 5000).

(b) To monitor mental health facilities, services and programs for compliance with statutory and regulatory patients' rights provisions.

(c) To provide training and education about mental health law and patients' rights to mental health providers.

(d) To ensure that recipients of mental health services in all licensed health and community care facilities are notified of their rights.

(e) To exchange information and cooperate with the Patients' Rights Office.

This section does not constitute a change in, but is declarative of the existing law.

(Added by Stats.1981, c. 841, p. 3238, § 7.)

§ 5521. Legal representation

It is the intent of the Legislature that legal representation regarding changes in client legal status or conditions and other areas covered by statute providing for local public defender or court–appointed attorney representation, shall remain the responsibility of local agencies, in particular the county public defender. County patients' rights advocates shall not duplicate, replace, or conflict with these existing or mandated local legal representations. This section shall not be construed to prevent maximum cooperation between legal representatives and providers of advocacy services.

(Added by Stats.1981, c. 841, p. 3239, § 7.)

§ 5522. Investigations

County patients' rights advocates may conduct investigations if there is probable cause to believe that the rights of a past or present recipient of mental health services have been, may have been, or may be violated.

(Added by Stats.1981, c. 841, p. 3239, § 7.)

§ 5523. Competency of recipients of mental health services to contract; investigations without request; agreements with clients; legal representation of recipients; cumulative remedies; investigations of past recipients' rights

(a) Notwithstanding any other provision of law, and without regard to the existence of a guardianship or conservatorship, a recipient of mental health services is presumed competent for the purpose of entering into an agreement with county patients' rights advocates for the provision of advocacy services unless found by the superior court to be incompetent to enter into an agreement with an advocate and a guardian ad litem is appointed for such purposes.

(b) In conducting investigations in cases in which an advocate has not received a request for advocacy services from a recipient of mental health services or from another person on behalf of a recipient of mental health services, the advocate shall notify the treating professional responsible for the care of any recipient of services whom the advocate wishes to interview, and the facility, service, or program administrator, of his or her intention to conduct such an interview. Whenever the treating professional is reasonably available for consultation, the advocate shall consult with the professional concerning the appropriate time to conduct the interview.

(c) Any agreement with any county patients' rights advocate entered into by a mental health client shall be made knowingly and voluntarily or by a guardian ad litem. It shall be in a language or modality which the client understands. Any such agreement may, at any time, be revoked by the client or by the guardian ad litem, whoever has entered into the agreement, either in writing or by oral declaration to the advocate.

(d) Nothing in this chapter shall be construed to prohibit a recipient of mental health services from being represented by public or private legal counsel of his or her choice.

(e) The remedies provided by this chapter shall be in addition to any other remedies which may be available to any person, and the failure to pursue or exhaust the remedies or engage in the procedures provided by this chapter shall not preclude the invocation of any other remedy.

(f) Investigations concerning violations of a past recipients' rights shall be limited to cases involving discrimination, cases indicating the need for education or training, or cases having a direct bearing on

violations of the right of a current recipient. This subdivision is not intended to constrain the routine monitoring for compliance with patients' rights provisions described in subdivision (b) of Section 5520.
(Added by Stats.1981, c. 841, p. 3239, § 7. Amended by Stats.1984, c. 193, § 151.)

Article 4 ACCESS TO CLIENTS

§ 5530. Time; appeal of denial of access; interviews; privacy of patients; educational materials and discussions

(a) County patients' rights advocates shall have access to all clients and other recipients of mental health services in any mental health facility, program, or service at all times as are necessary to investigate or resolve specific complaints and in accord with subdivision (b) of Section 5523. County patients' rights advocates shall have access to mental health facilities, programs, and services, and recipients of services therein during normal working hours and visiting hours for other advocacy purposes. Advocates may appeal any denial of access directly to the head of any facility, the director of a county mental health program or the State Department of Mental Health or may seek appropriate relief in the courts. If a petition to a court sets forth prima facie evidence for relief, a hearing on the merits of the petition shall be held within two judicial days of the filing of the petition. The superior court for the county in which the facility is located shall have jurisdiction to review petitions filed pursuant to this chapter.

(b) County patients' rights advocates shall have the right to interview all persons providing the client with diagnostic or treatment services.

(c) Upon request, all mental health facilities shall, when available, provide reasonable space for county patients' rights advocates to interview clients in privacy and shall make appropriate staff persons available for interview with the advocates in connection with pending matters.

(d) Individual patients shall have a right to privacy which shall include the right to terminate any visit by persons who have access pursuant to this chapter and the right to refuse to see any patient advocate.

(e) Notice of the availability of advocacy services and information about patients' rights may be provided by county patients' rights advocates by means of distribution of educational materials and discussions in groups and with individual patients.
(Added by Stats.1981, c. 841, p. 3240, § 7. Amended by Stats.1983, c. 101, § 170.)

Article 5 ACCESS TO RECORDS

§ 5540. Confidential information

Except as otherwise provided in this chapter or in other provisions of law, information about and records of recipients of mental health services shall be confidential in accordance with the provisions of Section 5328.
(Added by Stats.1981, c. 841, p. 3240, § 7.)

§ 5541. Authorization; revocation; inspection and copying of information and records

(a) A specific authorization by the client or by the guardian ad litem is necessary for a county patients' rights advocate to have access to, copy or otherwise use confidential records or information pertaining to the client. Such an authorization shall be given knowingly and voluntarily by a client or guardian ad litem and shall be in writing or be reduced to writing. The client or the guardian ad litem, whoever has entered into the agreement, may revoke such authorization at any time, either in writing or by oral declaration to the advocate.

(b) When specifically authorized by the client or the guardian ad litem, the county patients' rights advocate may inspect and copy confidential client information and records.
(Added by Stats.1981, c. 841, p. 3241, § 7.)

§ 5542. Inspection and copying of materials not subject to confidentiality

County patients' rights advocates shall have the right to inspect or copy, or both, any records or other materials not subject to confidentiality under Section 5328 or other provisions of law in the possession of any mental health program, services, or facilities, or city, county or state agencies relating to an investigation on behalf of a client or which indicate compliance or lack of compliance with laws and regulations governing patients' rights, including, but not limited to, reports on the use of restraints or seclusion, and autopsy reports.
(Added by Stats.1981, c. 841, p. 3241, § 7.)

§ 5543. Communication to client concerning information contained in client records

(a) Notwithstanding any other provision of law, with the authorization of the client, a county patients' rights advocate may, to the extent necessary for effective advocacy, communicate to the client information contained in client records. The facility program, or agency, shall be allowed to remove from the records any information provided in confidence by members of a client's family.
(Added by Stats.1981, c. 841, p. 3241, § 7.)

§ 5544. Use and dissemination of written client information

Any written client information obtained by county patients' rights advocates may be used and disseminated in court or administrative proceedings, and to any public agencies, or authorized officials thereof, to the extent required in the providing of advocacy services defined in this chapter, and to the extent that authority to so disclose is obtained from the advocate's clients.
(Added by Stats.1981, c. 841, p. 3241, § 7.)

§ 5545. Access to recipients for purposes of subdivision (b) of § 5520

Nothing in this chapter shall be construed to limit access to recipients of mental health services in any mental health facility, program, or service or to information or records of recipients of mental health services for the purposes of subdivision (b) of Section 5520 or when otherwise authorized by law to county patients' rights advocates or other individuals who are not county patients' rights advocates.
(Added by Stats.1981, c. 841, p. 3241, § 7.)

§ 5546. Costs of records and materials

The actual cost of copying any records or other materials authorized under this chapter, plus any additional reasonable clerical costs, incurred in locating and making the records and materials available, shall be borne by the advocate. The additional clerical costs shall be based on a computation of the time spent locating and making the records available multiplied by the employee's hourly wage.
(Added by Stats.1981, c. 841, p. 3241, § 7.)

Article 6 PENALTIES

§ 5550. Immunity from liability; obstructing performance of advocate; discrimination or retaliation against patient or employee; client privacy; confidentiality of information

(a) Any person participating in filing a complaint or providing information pursuant to this chapter or participating in a judicial proceeding resulting therefrom shall be presumed to be acting in good faith and unless the presumption is rebutted shall be immune from any liability, civil or criminal, and shall be immune from any penalty, sanction, or restriction that otherwise might be incurred or imposed.

(b) No person shall knowingly obstruct any county patients' rights advocate in the performance of duties as described in this chapter, including, but not limited to, access to clients or potential clients, or to their records, whether financial, medical, or otherwise, or to other information, materials, or records, or otherwise violate the provisions of this chapter.

(c) No facility to which the provisions of Section 5325 are applicable shall discriminate or retaliate in any manner against a patient or employee on the basis that such patient or employee has initiated or participated in any proceeding specified in this chapter. Any attempt by a facility to expel a patient, or any discriminatory treatment of a patient, who, or upon whose behalf, a complaint has been submitted to a county patients' rights advocate within 120 days of the filing of the complaint shall raise a rebuttable presumption that such action was taken by the facility in retaliation for the filing of the complaint.

(d) No county patients' rights advocate shall knowingly violate any provision of this chapter concerning client privacy and the confidentiality of personally identifiable information.

(e) Any person or facility found in violation of subdivision (b) or (d) shall pay a civil penalty, as determined by a court, of not less than one hundred dollars ($100), or more than one thousand dollars ($1,000) which shall be deposited in the county general funds.
(Added by Stats.1981, c. 841, p. 3242, § 7.)

Part 1.5 CHILDREN'S CIVIL COMMITMENT AND MENTAL HEALTH TREATMENT ACT OF 1988

Chapter 1 GENERAL PROVISIONS

§ 5585. Title

This part shall be known as the Children's Civil Commitment and Mental Health Treatment Act of 1988.
(Added by Stats.1988, c. 1202, § 2.)

§ 5585.10. Legislative intent and purposes

This part shall be construed to promote the legislative intent and purposes of this part as follows:

(a) To provide prompt evaluation and treatment of mentally disordered minors, with particular priority given to seriously emotionally disturbed children and adolescents.

(b) To safeguard the rights to due process for minors and their families through judicial review.

(c) To provide individualized treatment, supervision, and placement services for gravely disabled minors.

(d) To prevent severe and long–term mental disabilities among minors through early identification, effective family service interventions, and public education.
(Added by Stats.1988, c. 1202, § 2.)

§ 5585.20. Application of part; conflicting provisions

This part shall apply only to the initial 72 hours of mental health evaluation and treatment provided to a minor. Notwithstanding the provisions of the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000)), unless the context otherwise requires, the definitions and procedures contained in this part shall, for the initial 72 hours of evaluation and treatment, govern the construction of state law governing the civil commitment of minors for involuntary treatment. To the extent that this part conflicts with any other provisions of law, it is the intent of the Legislature that this part shall apply. Evaluation and treatment of a minor beyond the initial 72 hours shall be pursuant to the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000)).
(Added by Stats.1988, c. 1202, § 2.)

§ 5585.21. Regulations

The Director of Mental Health may promulgate regulations as necessary to implement and clarify the provisions of this part as they relate to minors.
(Added by Stats.1988, c. 1202, § 2.)

§ 5585.22. Educational materials and training curriculum

The Director of Mental Health, in consultation with the California Conference of Local Mental Health Directors, may develop the appropriate educational materials and a training curriculum, and may provide training as necessary to assure those persons providing services pursuant to this part fully understand its purpose.
(Added by Stats.1988, c. 1202, § 2.)

§ 5585.25. Gravely disabled minor

"Gravely disabled minor" means a minor who, as a result of a mental disorder, is unable to use the elements of life which are essential to health, safety, and development, including food, clothing, and shelter, even though provided to the minor by others. Mental retardation, epilepsy, or other developmental disabilities, alcoholism, other drug abuse, or repeated antisocial behavior do not, by themselves, constitute a mental disorder.
(Added by Stats.1988, c. 1202, § 2.)

Chapter 2 CIVIL COMMITMENT OF MINORS

§ 5585.50. Custody and placement of minor in facility; notice to parent or legal guardian; probable cause application; civil liability for intentional false statement

When any minor, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled and authorization for voluntary treatment is not available, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, designated members of a mobile crisis team provided by Section 5651.7, or other professional person designated by the county may, upon probable cause, take, or cause to be taken, the minor into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for seventy–two hour treatment and evaluation of minors. The facility shall make every effort to notify the minor's parent or legal guardian as soon as possible after the minor is detained.

The facility shall require an application in writing stating the circumstances under which the minor's condition was called to the attention of the officer, member of the attending staff, or professional person, and stating that the officer, member of the attending staff, or professional person has probable cause to believe that the minor is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled and authorization for voluntary treatment is not available. If the probable cause is based on the statement of a person other than the officer, member of the attending staff, or professional person, the person shall be liable in a civil action for intentionally giving a statement which he or she knows to be false.
(Added by Stats.1988, c. 1202, § 2.)

§ 5585.52. Clinical evaluation; parent or legal guardian involvement

Any minor detained under the provisions of Section 5585.50 shall receive a clinical evaluation consisting of multidisciplinary professional analyses of the minor's medical, psychological, developmental, educational, social, financial, and legal conditions as may appear to constitute a problem. This evaluation shall include a psychosocial evaluation of the family or living environment, or both. Persons providing evaluation services shall be properly qualified professionals with training or supervised experience, or both, in the diagnosis and treatment of minors. Every effort shall be made to involve the minor's parent or legal guardian in the clinical evaluation.
(Added by Stats.1988, c. 1202, § 2.)

§ 5585.53. Additional treatment; treatment plan; least restrictive placement alternative; consultation and consent; involuntary treatment

If, in the opinion of the professional person conducting the evaluation as specified in Section 5585.52, the minor will require additional mental health treatment, a treatment plan shall be written and shall identify the least restrictive placement alternative in which the minor can receive the necessary treatment. The family, legal

guardian, or caretaker and the minor shall be consulted and informed as to the basic recommendations for further treatment and placement requirements. Every effort shall be made to obtain the consent of the minor's parent or legal guardian prior to treatment and placement of the minor. Inability to obtain the consent of the minor's parent or legal guardian shall not preclude the involuntary treatment of a minor who is determined to be gravely disabled or a danger to himself or herself or others. Involuntary treatment shall only be allowed in accordance with the provisions of the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000)).
(Added by Stats.1988, c. 1202, § 2.)

§ 5585.55. Involuntary treatment; confinement with adults

The minor committed for involuntary treatment under this part shall be placed in a health facility designated by the county and approved by the State Department of Mental Health as a facility for 72–hour evaluation and treatment. Except as provided for in Section 5751.7, each county shall assure that minors under the age of 16 years are not held with adults receiving psychiatric treatment under the provisions of the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000)).
(Added by Stats.1988, c. 1202, § 2.)

§ 5585.57. Aftercare plan

A mentally ill minor, upon being considered for release from involuntary treatment, shall have an aftercare plan developed. The plan shall include educational or training needs, provided these are necessary for the minor's well–being.
(Added by Stats.1988, c. 1202, § 2.)

§ 5585.58. Funding

This part shall be funded under the Bronzan–McCorquodale Act pursuant to Part 2 (commencing with Section 5600), as part of the county performance contract.
(Added by Stats.1988, c. 1202, § 2. Amended by Stats.1993, c. 1245 (S.B.282), § 8, eff. Oct. 11, 1993.)

§ 5585.59. Legally emancipated minors

For the purposes of this part, legally emancipated minors requiring involuntary treatment shall be considered adults and this part shall not apply.
(Added by Stats.1988, c. 1202, § 2.)

§ 5587. Metropolitan State Hospital Youth Program; admission policy; documentation of prior placement attempts

The Metropolitan State Hospital Youth Program's admission policy shall require the referring agency to document all placement attempts prior to admission. The youth program's discharge planning policy shall require the referring agency to document all attempts to place the child during the discharge planning process.
(Added by Stats.1998, c. 310 (A.B.2780), § 67, eff. Aug. 19, 1998.)

Part 2 THE BRONZAN–MCCORQUODALE ACT

Chapter 1 GENERAL PROVISIONS

§ 5600. Title and purpose

(a) This part shall be known and may be cited as the Bronzan–McCorquodale Act. This part is intended to organize and finance community mental health services for the mentally disordered in every county through locally administered and locally controlled community mental health programs. It is furthermore intended to better utilize existing resources at both the state and local levels in order to improve the effectiveness of necessary mental health services; to integrate state–operated and community mental health programs into a unified mental health system; to ensure that all mental health professions be appropriately represented and utilized in the mental health programs; to provide a means for participation by local governments in the determination of the need for and the allocation of mental health resources under the jurisdiction of the state; and to provide a means of allocating mental health funds deposited in the Local Revenue Fund equitably among counties according to community needs.

(b) With the exception of those referring to Short–Doyle Medi–Cal services, any other provisions of law referring to the Short–Doyle Act shall be construed as referring to the Bronzan–McCorquodale Act.
(Added by Stats.1968, c. 989, p. 1912, § 2, operative July 1, 1969. Amended by Stats.1975, c. 1128, p. 2749, § 2; Stats.1979, c. 557, p. 1765, § 1; Stats.1984, c. 1327, § 2, eff. Sept. 25, 1984; Stats.1985, c. 1081, § 1; Stats.1988, c. 1305, § 1, eff. Sept. 26, 1988; Stats.1990, c. 699 (A.B.3516), § 1; Stats.1991, c. 89 (A.B.1288), § 63, eff. June 30, 1991.)

§ 5600.1. Mental health system; mission statement

The mission of California's mental health system shall be to enable persons experiencing severe and disabling mental illnesses and children with serious emotional disturbances to access services and programs that assist them, in a manner tailored to each individual, to better control their illness, to achieve their personal goals, and to develop skills and supports leading to their living the most constructive and satisfying lives possible in the least restrictive available settings.
(Added by Stats.1991, c. 89 (A.B.1288), § 65, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 35, eff. Oct. 7, 1991.)

§ 5600.2. Health care systems; target populations; factors

To the extent resources are available, public mental health services in this state should be provided to priority target populations in systems of care that are client–centered, culturally competent, and fully accountable, and which include the following factors:

(a) Client–Centered Approach. All services and programs designed for persons with mental disabilities should be client centered, in recognition of varying individual goals, diverse needs, concerns, strengths, motivations, and disabilities. Persons with mental disabilities:

(1) Retain all the rights, privileges, opportunities, and responsibilities of other citizens unless specifically limited by federal or state law or regulations.

(2) Are the central and deciding figure, except where specifically limited by law, in all planning for treatment and rehabilitation based on their individual needs. Planning should also include family members and friends as a source of information and support.

(3) Shall be viewed as total persons and members of families and communities. Mental health services should assist clients in returning to the most constructive and satisfying lifestyles of their own definition and choice.

(4) Should receive treatment and rehabilitation in the most appropriate and least restrictive environment, preferably in their own communities.

(5) Should have an identifiable person or team responsible for their support and treatment.

(6) Shall have available a mental health advocate to ensure their rights as mental health consumers pursuant to Section 5521.

(b) Priority Target Populations. Persons with serious mental illnesses have severe, disabling conditions that require treatment, giving them a high priority for receiving available services.

(c) Systems of Care. The mental health system should develop coordinated, integrated, and effective services organized in systems of care to meet the unique needs of children and youth with serious emotional disturbances, and adults, older adults, and special populations with serious mental illnesses. These systems of care should operate in conjunction with an interagency network of other services necessary for individual clients.

(d) Outreach. Mental health services should be accessible to all consumers on a 24–hour basis in times of crisis. Assertive outreach

should make mental health services available to homeless and hard–to–reach individuals with mental disabilities.

(e) Multiple Disabilities. Mental health services should address the special needs of children and youth, adults, and older adults with dual and multiple disabilities.

(f) Quality of Service. Qualified individuals trained in the client–centered approach should provide effective services based on measurable outcomes and deliver those services in environments conducive to clients' well–being.

(g) Cultural Competence. All services and programs at all levels should have the capacity to provide services sensitive to the target populations' cultural diversity. Systems of care should:

(1) Acknowledge and incorporate the importance of culture, the assessment of cross–cultural relations, vigilance towards dynamics resulting from cultural differences, the expansion of cultural knowledge, and the adaptation of services to meet culturally unique needs.

(2) Recognize that culture implies an integrated pattern of human behavior, including language, thoughts, beliefs, communications, actions, customs, values, and other institutions of racial, ethnic, religious, or social groups.

(3) Promote congruent behaviors, attitudes, and policies enabling the system, agencies, and mental health professionals to function effectively in cross–cultural institutions and communities.

(h) Community Support. Systems of care should incorporate the concept of community support for individuals with mental disabilities and reduce the need for more intensive treatment services through measurable client outcomes.

(i) Self–Help. The mental health system should promote the development and use of self–help groups by individuals with serious mental illnesses so that these groups will be available in all areas of the state.

(j) Outcome Measures. State and local mental health systems of care should be developed based on client–centered goals and evaluated by measurable client outcomes.

(k) Administration. Both state and local departments of mental health should manage programs in an efficient, timely, and cost–effective manner.

(*l*) Research. The mental health system should encourage basic research into the nature and causes of mental illnesses and cooperate with research centers in efforts leading to improved treatment methods, service delivery, and quality of life for mental health clients.

(m) Education on Mental Illness. Consumer and family advocates for mental health should be encouraged and assisted in informing the public about the nature of mental illness from their viewpoint and about the needs of consumers and families. Mental health professional organizations should be encouraged to disseminate the most recent research findings in the treatment and prevention of mental illness.

(Added by Stats.1991, c. 89 (A.B.1288), § 67, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 36, eff. Oct. 7, 1991; Stats.1992, c. 1374 (A.B.14), § 15, eff. Oct. 28, 1992.)

§ 5600.3. Mental health account funds; populations targeted for use

To the extent resources are available, the primary goal of use of funds deposited in the mental health account of the local health and welfare trust fund should be to serve the target populations identified in the following categories, which shall not be construed as establishing an order of priority:

(a)(1) Seriously emotionally disturbed children or adolescents.

(2) For the purposes of this part, "seriously emotionally disturbed children or adolescents" means minors under the age of 18 years who have a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, other than a primary substance use disorder or developmental disorder, which results in behavior inappropriate to the child's age according to expected developmental norms. Members of this target population shall meet one or more of the following criteria:

(A) As a result of the mental disorder the child has substantial impairment in at least two of the following areas: self–care, school functioning, family relationships, or ability to function in the community; and either of the following occur:

(i) The child is at risk of removal from home or has already been removed from the home.

(ii) The mental disorder and impairments have been present for more than six months or are likely to continue for more than one year without treatment.

(B) The child displays one of the following: psychotic features, risk of suicide or risk of violence due to a mental disorder.

(C) The child meets special education eligibility requirements under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(b)(1) Adults and older adults who have a serious mental disorder.

(2) For the purposes of this part "serious mental disorder" means a mental disorder which is severe in degree and persistent in duration, which may cause behavioral functioning which interferes substantially with the primary activities of daily living, and which may result in an inability to maintain stable adjustment and independent functioning without treatment, support, and rehabilitation for a long or indefinite period of time. Serious mental disorders include, but are not limited to, schizophrenia, as well as major affective disorders or other severely disabling mental disorders. This section shall not be construed to exclude persons with a serious mental disorder and a diagnosis of substance abuse, developmental disability, or other physical or mental disorder.

(3) Members of this target population shall meet all of the following criteria:

(A) The person has a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, other than a substance use disorder or developmental disorder or acquired traumatic brain injury pursuant to subdivision (a) of Section 4354 unless that person also has a serious mental disorder as defined in paragraph (2).

(B)(i) As a result of the mental disorder the person has substantial functional impairments or symptoms, or a psychiatric history demonstrating that without treatment there is an imminent risk of decompensation to having substantial impairments or symptoms.

(ii) For the purposes of this part, "functional impairment" means being substantially impaired as the result of a mental disorder in independent living, social relationships, vocational skills, or physical condition.

(C) As a result of a mental functional impairment and circumstances the person is likely to become so disabled as to require public assistance, services, or entitlements.

(4) For the purpose of organizing outreach and treatment options, to the extent resources are available, this target population includes, but is not limited to, persons who are any of the following:

(A) Homeless persons who are mentally ill.

(B) Persons evaluated by appropriately licensed persons as requiring care in acute treatment facilities including state hospitals, acute inpatient facilities, institutes for mental disease, and crisis residential programs.

(C) Persons arrested or convicted of crimes.

(D) Persons who require acute treatment as a result of a first episode of mental illness with psychotic features.

(5) California veterans in need of mental health services who are not eligible for care by the United States Department of Veterans Affairs or other federal health care provider and who meet the existing eligibility requirements of this section, shall be provided services to the extent resources are available. Counties shall refer a veteran to the county veterans service officer, if any, to determine the veteran's eligibility for, and the availability of, mental health services provided by the United States Department of Veterans Affairs or other federal health care provider.

(c) Adults or older adults who require or are at risk of requiring acute psychiatric inpatient care, residential treatment, or outpatient crisis intervention because of a mental disorder with symptoms of psychosis, suicidality, or violence.

(d) Persons who need brief treatment as a result of a natural disaster or severe local emergency.

(Added by Stats.1991, c. 89 (A.B.1288), § 68, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 38, eff. Oct. 7, 1991; Stats.1992, c. 1374 (A.B.14), § 16, eff. Oct. 28, 1992; Stats.2005, c. 221 (A.B.599), § 1.)

§ 5600.35. Statewide access to services

(a) Services should be encouraged in every geographic area to the extent resources are available for clients in the target population categories described in Section 5600.3.

(b) Services to the target populations should be planned and delivered so as to ensure statewide access by members of the target populations, including all ethnic groups in the state.

(Added by Stats.1991, c. 89 (A.B.1288), § 69, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5600.4. Treatment options

Community mental health services should be organized to provide an array of treatment options in the following areas, to the extent resources are available:

(a) Precrisis and Crisis Services. Immediate response to individuals in precrisis and crisis and to members of the individual's support system, on a 24–hour, seven–day–a–week basis. Crisis services may be provided offsite through mobile services. The focus of precrisis services is to offer ideas and strategies to improve the person's situation, and help access what is needed to avoid crisis. The focus of crisis services is stabilization and crisis resolution, assessment of precipitating and attending factors, and recommendations for meeting identified needs.

(b) Comprehensive Evaluation and Assessment. Includes, but is not limited to, evaluation and assessment of physical and mental health, income support, housing, vocational training and employment, and social support services needs. Evaluation and assessment may be provided offsite through mobile services.

(c) Individual Service Plan. Identification of the short– and long–term service needs of the individual, advocating for, and coordinating the provision of these services. The development of the plan should include the participation of the client, family members, friends, and providers of services to the client, as appropriate.

(d) Medication Education and Management. Includes, but is not limited to, evaluation of the need for administration of, and education about, the risks and benefits associated with medication. Clients should be provided this information prior to the administration of medications pursuant to state law. To the extent practicable, families and caregivers should also be informed about medications.

(e) Case Management. Client–specific services that assist clients in gaining access to needed medical, social, educational, and other services. Case management may be provided offsite through mobile services.

(f) Twenty–four Hour Treatment Services. Treatment provided in any of the following: an acute psychiatric hospital, an acute psychiatric unit of a general hospital, a psychiatric health facility, an institute for mental disease, a community treatment facility, or community residential treatment programs, including crisis, transitional and long–term programs.

(g) Rehabilitation and Support Services. Treatment and rehabilitation services designed to stabilize symptoms, and to develop, improve, and maintain the skills and supports necessary to live in the community. These services may be provided through various modes of services, including, but not limited to, individual and group counseling, day treatment programs, collateral contacts with friends and family, and peer counseling programs. These services may be provided offsite through mobile services.

(h) Vocational Rehabilitation. Services which provide a range of vocational services to assist individuals to prepare for, obtain, and maintain employment.

(i) Residential Services. Room and board and 24–hour care and supervision.

(j) Services for Homeless Persons. Services designed to assist mentally ill persons who are homeless, or at risk of being homeless, to secure housing and financial resources.

(k) Group Services. Services to two or more clients at the same time.

(Added by Stats.1991, c. 89 (A.B.1288), § 71, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 39, eff. Oct. 7, 1991; Stats.1992, c. 1374 (A.B.14), § 17, eff. Oct. 28, 1992; Stats.1993, c. 1245 (S.B.282), § 9, eff. Oct. 11, 1993.)

§ 5600.5. Children and youth in target population; minimum array of services

The minimum array of services for children and youth meeting the target population criteria established in subdivision (a) of Section 5600.3 should include the following modes of service in every geographical area, to the extent resources are available:

(a) Precrisis and crisis services.

(b) Assessment.

(c) Medication education and management.

(d) Case management.

(e) Twenty–four–hour treatment services.

(f) Rehabilitation and support services designed to alleviate symptoms and foster development of age appropriate cognitive, emotional, and behavioral skills necessary for maturation.

(Added by Stats.1991, c. 89 (A.B.1288), § 73, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 40, eff. Oct. 7, 1991; Stats.1992, c. 1374 (A.B.14), § 18, eff. Oct. 28, 1992.)

§ 5600.6. Adults in target population; minimum array of services

The minimum array of services for adults meeting the target population criteria established in subdivision (b) of Section 5600.3 should include the following modes of service in every geographical area, to the extent resources are available:

(a) Precrisis and crisis services.

(b) Assessment.

(c) Medication education and management.

(d) Case management.

(e) Twenty–four–hour treatment services.

(f) Rehabilitation and support services.

(g) Vocational services.

(h) Residential services.

(Added by Stats.1991, c. 89 (A.B.1288), § 75, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5600.7. Older adults in target population; minimum array of services

The minimum array of services for older adults meeting the target population criteria established in subdivision (b) of Section 5600.3 should include the following modes of service in every geographical area, to the extent resources are available:

(a) Precrisis and crisis services, including mobile services.

(b) Assessment, including mobile services.

(c) Medication education and management.

(d) Case management, including mobile services.

(e) Twenty–four–hour treatment services.

(f) Residential services.

(g) Rehabilitation and support services, including mobile services.
(Added by Stats.1991, c. 89 (A.B.1288), § 77, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 41, eff. Oct. 7, 1991.)

§ 5600.8. Allocation of funds

(a) The department may allocate the funds appropriated in Schedule (2) of Item 4440–101–0001 of the annual Budget Act, to county mental health programs that meet programmatic goals and model adult system of care programs to the satisfaction of the department. The department shall audit and monitor the use of these funds to ensure they are used solely in support of Adult System of Care programming. If county programs receiving adult system of care funding do not comply with program and audit requirements determined by the department, funding shall be redistributed to other counties to implement, expand, or model adult systems of care.

(b) The department may allocate the funds appropriated in Schedule (3) of Item 4440–101–0001 of the annual Budget Act, to county mental health programs for Children's System of Care programming. These funds shall be utilized by counties only in support of a mental health system serving seriously emotionally disturbed children, in accordance with the principles and program requirements associated with the system of care model, as set forth in Part 4 (commencing with Section 5850). The department shall audit and monitor the use of these funds to ensure they are used solely in support of the Children's System of Care program. If county programs receiving children's system of care funding do not comply with program and audit requirements determined by the department, funds shall be redistributed to other counties to implement, expand, or model children's system of care programming.
(Added by Stats.2000, c. 93 (A.B.2877), § 50, eff. July 7, 2000. Amended by Stats.2002, c. 1161 (A.B.442), § 35, eff. Sept. 30, 2002.)

§ 5600.9. Planning and delivery of services

(a) Services to the target populations described in Section 5600.3 should be planned and delivered to the extent practicable so that persons in all ethnic groups are served with programs that meet their cultural needs.

(b) Services in rural areas should be developed in flexible ways, and may be designed to meet the needs of the indigent and uninsured who are in need of public mental health services because other private services are not available.

(c) To the extent permitted by law, counties should maximize all available funds for the provision of services to the target populations. Counties are expressly encouraged to develop interagency programs and to blend services and funds for individuals with multiple problems, such as those with mental illness and substance abuse, and children, who are served by multiple agencies. State departments are directed to assist counties in the development of mechanisms to blend funds and to seek any necessary waivers which may be appropriate.
(Added by Stats.1991, c. 89 (A.B.1288), § 79, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 42, eff. Oct. 7, 1991.)

§ 5601. Definitions

As used in this part:

(a) "Governing body" means the county board of supervisors or boards of supervisors in the case of counties acting jointly; and in the case of a city, the city council or city councils acting jointly.

(b) "Conference" means the California Conference of Local Mental Health Directors as established under Section 5757.

(c) Unless the context requires otherwise, "to the extent resources are available" means to the extent that funds deposited in the mental health account of the local health and welfare fund are available to an entity qualified to use those funds.

(d) "Part 1" refers to the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000)).

(e) "Director of Mental Health" or "director" means the Director of the State Department of Mental Health.

(f) "Institution" includes a general acute care hospital, a state hospital, a psychiatric hospital, a psychiatric health facility, a skilled nursing facility, including an institution for mental disease as described in Chapter 1 (commencing with Section 5900) of Part 5, an intermediate care facility, a community care facility or other residential treatment facility, or a juvenile or criminal justice institution.

(g) "Mental health service" means any service directed toward early intervention in, or alleviation or prevention of, mental disorder, including, but not limited to, diagnosis, evaluation, treatment, personal care, day care, respite care, special living arrangements, community skill training, sheltered employment, socialization, case management, transportation, information, referral, consultation, and community services.
(Added by Stats.1968, c. 989, p. 1912, § 2, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3345, § 383, operative July 1, 1973; Stats.1977, c. 1252, p. 4582, § 586, operative July 1, 1978; Stats.1979, c. 557, p. 1767, § 7; Stats.1984, c. 1327, § 6, eff. Sept. 25, 1984; Stats.1991, c. 89 (A.B.1288), § 80, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5602. Establishment of community mental health service; provision of services

The board of supervisors of every county, or the boards of supervisors of counties acting under the joint powers provisions of Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code shall establish a community mental health service to cover the entire area of the county or counties. Services of the State Department of Mental Health shall be provided to the county, or counties acting jointly, or, if both parties agree, the state facilities may, in whole or in part, be leased, rented or sold to the county or counties for county operation, subject to terms and conditions approved by the Director of General Services.
(Added by Stats.1968, c. 989, p. 1913, § 2, operative July 1, 1969. Amended by Stats.1970, c. 1627, p. 3450, § 26.2; Stats.1971, c. 1593, p. 3345, § 384; Stats.1971, c. 1162, p. 2222, § 6; Stats.1973, c. 142, p. 419, § 73, eff. June 30, 1973, operative July 1, 1973; Stats.1977, c. 1252, p. 4582, § 587, operative July 1, 1978; Stats.1984, c. 1327, § 7, eff. Sept. 25, 1984; Stats.1991, c. 89 (A.B.1288), § 81, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5604. Mental health board

(a)(1) Each community mental health service shall have a mental health board consisting of 10 to 15 members, depending on the preference of the county, appointed by the governing body, except that boards in counties with a population of less than 80,000 may have a minimum of five members. One member of the board shall be a member of the local governing body. Any county with more than five supervisors shall have at least the same number of members as the size of its board of supervisors. Nothing in this section shall be construed to limit the ability of the governing body to increase the number of members above 15. Local mental health boards may recommend appointees to the county supervisors. Counties are encouraged to appoint individuals who have experience and knowledge of the mental health system. The board membership should reflect the ethnic diversity of the client population in the county.

(2) Fifty percent of the board membership shall be consumers or the parents, spouses, siblings, or adult children of consumers, who are receiving or have received mental health services. At least 20 percent of the total membership shall be consumers, and at least 20 percent shall be families of consumers.

(3)(A) In counties under 80,000 population, at least one member shall be a consumer, and at least one member shall be a parent, spouse,

sibling, or adult child of a consumer, who is receiving, or has received, mental health services.

(B) Notwithstanding subparagraph (A), a board in a county with a population under 80,000 that elects to have the board exceed the five–member minimum permitted under paragraph (1) shall be required to comply with paragraph (2).

(b) The term of each member of the board shall be for three years. The governing body shall equitably stagger the appointments so that approximately one–third of the appointments expire in each year.

(c) If two or more local agencies jointly establish a community mental health service under Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the mental health board for the community mental health service shall consist of an additional two members for each additional agency, one of whom shall be a consumer or a parent, spouse, sibling, or adult child of a consumer who has received mental health services.

(d) No member of the board or his or her spouse shall be a full–time or part–time county employee of a county mental health service, an employee of the State Department of Mental Health, or an employee of, or a paid member of the governing body of, a mental health contract agency.

(e) Members of the board shall abstain from voting on any issue in which the member has a financial interest as defined in Section 87103 of the Government Code.

(f) If it is not possible to secure membership as specified from among persons who reside in the county, the governing body may substitute representatives of the public interest in mental health who are not full–time or part–time employees of the county mental health service, the State Department of Mental Health, or on the staff of, or a paid member of the governing body of, a mental health contract agency.

(g) The mental health board may be established as an advisory board or a commission, depending on the preference of the county.

(Added by Stats.1968, c. 989, p. 1913, § 2, operative on the 61st day after final adjournment of the 1968 Regular Session. Amended by Stats.1969, c. 722, p. 1436, § 34, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1969, c. 1120, p. 2185, § 4, operative on the 61st day after final adjournment of the 1969 Regular Session; Stats.1970, c. 1627, p. 3451, § 27; Stats.1971, c. 1593, p. 3345, § 384.5, operative July 1, 1973; Stats.1973, c. 1212, p. 2837, § 328, operative July 1, 1974; Stats.1975, c. 1128, p. 2750, § 3; Stats.1976, c. 679, p. 1675, § 1; Stats.1977, c. 1252, p. 4582, § 588, operative July 1, 1978; Stats.1977, c. 726, p. 2309, § 1; Stats.1978, c. 429, p. 1456, § 210, eff. July 17, 1978, operative July 1, 1978; Stats.1978, c. 852, p. 2695, § 1; Stats.1984, c. 1327, § 9, eff. Sept. 25, 1984; Stats.1985, c. 1295, § 1; Stats.1986, c. 179, § 1; Stats.1987, c. 1004, § 2; Stats.1987, c. 1004, § 3, operative Jan. 1, 1990; Stats.1990, c. 85 (S.B.945), § 1, eff. May 9, 1990; Stats.1991, c. 89 (A.B.1288), § 83, eff. June 30, 1991; Stats.1992, c. 1374 (A.B.14), § 20, eff. Oct. 28, 1992; Stats.1993, c. 564 (S.B.43), § 2; Stats.1995, c. 712 (S.B.227), § 1; Stats.1997, c. 484 (S.B.651), § 1, eff. Sept. 25, 1997.)

§ 5604.1. Meetings of advisory boards

Local mental health advisory boards shall be subject to the provisions of Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, relating to meetings of local agencies.

(Formerly § 5605, added by Stats.1968, c. 989, p. 1914, § 2, operative July 1, 1969. Renumbered § 5604.1 and amended by Stats.1985, c. 1295, § 5; Stats.1991, c. 89 (A.B.1288), § 84, eff. June 30, 1991; Stats.1992, c. 1374 (A.B.14), § 21, eff. Oct. 28, 1992.)

§ 5604.2. Powers and duties of mental health board

(a) The local mental health board shall do all of the following:

(1) Review and evaluate the community's mental health needs, services, facilities, and special problems.

(2) Review any county agreements entered into pursuant to Section 5650.

(3) Advise the governing body and the local mental health director as to any aspect of the local mental health program.

(4) Review and approve the procedures used to ensure citizen and professional involvement at all stages of the planning process.

(5) Submit an annual report to the governing body on the needs and performance of the county's mental health system.

(6) Review and make recommendations on applicants for the appointment of a local director of mental health services. The board shall be included in the selection process prior to the vote of the governing body.

(7) Review and comment on the county's performance outcome data and communicate its findings to the California Mental Health Planning Council.

(8) Nothing in this part shall be construed to limit the ability of the governing body to transfer additional duties or authority to a mental health board.

(b) It is the intent of the Legislature that, as part of its duties pursuant to subdivision (a), the board shall assess the impact of the realignment of services from the state to the county, on services delivered to clients and on the local community.

(Formerly § 5606, added by Stats.1968, c. 989, p. 1914, § 2, operative July 1, 1969. Amended by Stats.1978, c. 852, p. 2697, § 4; Stats.1983, c. 1207, § 1.9, eff. Sept. 30, 1938; Stats.1984, c. 1327, § 10, eff. Sept. 25, 1984. Renumbered § 5604.2 and amended by Stats.1985, c. 1295, § 9. Amended by Stats.1991, c. 89 (A.B.1288), § 85, eff. June 30, 1991; Stats.1991, c. 611 (A.B.1491), § 43, eff. Oct. 7, 1991; Stats.1992, c. 1374 (A.B.14), § 22, eff. Oct. 28, 1992; Stats.1993, c. 564 (S.B.43), § 3.)

§ 5604.3. Expenses of board members

The board of supervisors may pay from any available funds the actual and necessary expenses of the members of the mental health board of a community mental health service incurred incident to the performance of their official duties and functions. The expenses may include travel, lodging, child care, and meals for the members of an advisory board while on official business as approved by the director of the local mental health program.

(Formerly § 5604.5, added by Stats.1973, c. 407, p. 872, § 1. Amended by Stats.1978, c. 852, p. 2696, § 3. Renumbered § 5604.3 and amended by Stats.1985, c. 1295, § 3. Amended by Stats.1991, c. 89 (A.B.1288), § 86, eff. June 30, 1991; Stats.1992, c. 1374 (A.B.14), § 23, eff. Oct. 28, 1992.)

§ 5604.5. Bylaws

The local mental health board shall develop bylaws to be approved by the governing body which shall:

(a) Establish the specific number of members on the mental health board, consistent with subdivision (a) of Section 5604.

(b) Ensure that the composition of the mental health board represents the demographics of the county as a whole, to the extent feasible.

(c) Establish that a quorum be one person more than one–half of the appointed members.

(d) Establish that the chairperson of the mental health board be in consultation with the local mental health director.

(e) Establish that there may be an executive committee of the mental health board.

(Added by Stats.1985, c. 1295, § 4. Amended by Stats.1991, c. 89 (A.B.1288), § 87, eff. June 30, 1991; Stats.1992, c. 1374 (A.B.14), § 24, eff. Oct. 28, 1992.)

§ 5607. Administration; qualifications of administrators

The local mental health services shall be administered by a local director of mental health services to be appointed by the governing body. He shall meet such standards of training and experience as the State Department of Mental Health, by regulation, shall require. Applicants for such positions need not be residents of the city, county, or state, and may be employed on a full or part–time basis. If a county is unable to secure the services of a person who meets the standards of the State Department of Mental Health, the county may select an

alternate administrator subject to the approval of the Director of Mental Health.
(Added by Stats.1968, c. 989, p. 1914, § 2, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3346, § 385, operative July 1, 1973; Stats.1977, c. 1252, p. 4583, § 589, operative July 1, 1978.)

§ 5608. Powers and duties of administrator

The local director of mental health services shall have the following powers and duties:

(a) Serve as chief executive officer of the community mental health service responsible to the governing body through administrative channels designated by the governing body.

(b) Exercise general supervision over mental health services provided under this part.

(c) Recommend to the governing body, after consultation with the advisory board, the provision of services, establishment of facilities, contracting for services or facilities and other matters necessary or desirable in accomplishing the purposes of this division.

(d) Submit an annual report to the governing body reporting all activities of the program, including a financial accounting of expenditures and a forecast of anticipated needs for the ensuing year.

(e) Carry on studies appropriate for the discharge of his or her duties, including the control and prevention of mental disorders.

(f) Possess authority to enter into negotiations for contracts or agreements for the purpose of providing mental health services in the county.
(Added by Stats.1968, c. 989, p. 1914, § 2, operative July 1, 1969. Amended by Stats.1991, c. 89 (A.B.1288), § 92, eff. June 30, 1991.)

§ 5610. Data and reporting requirements; client–based information system

(a) Each county mental health system shall comply with reporting requirements developed by the State Department of Mental Health which shall be uniform and simplified. The department shall review existing data requirements to eliminate unnecessary requirements and consolidate requirements which are necessary. These requirements shall provide comparability between counties in reports.

(b) The department shall develop, in consultation with the Performance Outcome Committee pursuant to Section 5611, and with the Health and Welfare Agency, uniform definitions and formats for a statewide, nonduplicative client–based information system that includes all information necessary to meet federal mental health grant requirements and state and federal medicaid reporting requirements, as well as any other state requirements established by law. The data system, including performance outcome measures reported pursuant to Section 5613, shall be developed by July 1, 1992.

(c) Unless determined necessary by the department to comply with federal law and regulations, the data system developed pursuant to subdivision (b) shall not be more costly than that in place during the 1990–91 fiscal year.

(d)(1) The department shall develop unique client identifiers that permit development of client–specific cost and outcome measures and related research and analysis.

(2) The department's collection and use of client information, and the development and use of client identifiers, shall be consistent with clients' constitutional and statutory rights to privacy and confidentiality.

(3) Data reported to the department may include name and other personal identifiers. That information is confidential and subject to Section 5328 and any other state and federal laws regarding confidential client information.

(4) Personal client identifiers reported to the department shall be protected to ensure confidentiality during transmission and storage through encryption and other appropriate means.

(5) Information reported to the department may be shared with local public mental health agencies submitting records for the same person and that information is subject to Section 5328.

(e) All client information reported to the department pursuant to Chapter 2 (commencing with Section 4030) of Part 1 of Division 4 and Sections 5328 to 5780, inclusive, and any other state and federal laws regarding reporting requirements, consistent with Section 5328, shall not be used for purposes other than those purposes expressly stated in the reporting requirements referred to in this subdivision.

(f) The department may adopt emergency regulations to implement this section in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of emergency regulations to implement this section that are filed with the Office of Administrative Law within one year of the date on which the act that added this subdivision took effect shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare and shall remain in effect for no more than 180 days.
(Added by Stats.1991, c. 89 (A.B.1288), § 94, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 44, eff. Oct. 7, 1991; Stats.1992, c. 1374 (A.B.14), § 29, eff. Oct. 28, 1992; Stats.1998, c. 738 (S.B.2098), § 2, eff. Sept. 22, 1998.)

§ 5611. Performance Outcome Committee

(a) The Director of Mental Health shall establish a Performance Outcome Committee, to be comprised of representatives from the PL 99–660 Planning Council and the California Conference of Local Mental Health Directors. Any costs associated with the performance of the duties of the committee shall be absorbed within the resources of the participants.

(b) Major mental health professional organizations representing licensed clinicians may participate as members of the committee at their own expense.

(c) The committee may seek private funding for costs associated with the performance of its duties.
(Added by Stats.1991, c. 89 (A.B.1288), § 96, eff. June 30, 1991.)

§ 5612. Evaluation of mental health services; performance measures

(a)(1) The Performance Outcome Committee shall develop measures of performance for evaluating client outcomes and cost effectiveness of mental health services provided pursuant to this division. The reporting of performance measures shall utilize the data collected by the State Department of Mental Health in the client–specific, uniform, simplified, and consolidated data system. The performance measures shall take into account resources available overall, resource imbalance between counties, other services available in the community, and county experience in developing data and evaluative information.

(2) During the 1992–93 fiscal year, the committee shall include measures of performance for evaluating client outcomes and cost–effectiveness of mental health services provided by state hospitals.

(b) The committee should consider outcome measures in the following areas:

(1) Numbers of persons in identified target populations served.

(2) Estimated number of persons in identified target populations in need of services.

(3) Treatment plans development for members of the target population served.

(4) Treatment plan goals met.

(5) Stabilization of living arrangements.

(6) Reduction of law enforcement involvement and jail bookings.

(7) Increase in employment or education activities.

(8) Percentage of resources used to serve children and older adults.

(9) Number of patients' rights advocates and their duties.

(10) Quality assurance activities for services, including peer review and medication management.

(11) Identification of special projects, incentives, and prevention programs.

(c) Areas identified for consideration by the committee are for guidance only.
(Added by Stats.1991, c. 89 (A.B.1288), § 98, eff. June 30, 1991. Amended by Stats.1992, c. 1374 (A.B.14), § 30, eff. Oct. 28, 1992.)

§ 5613. Performance measure reports

(a) Counties shall annually report data on performance measures established pursuant to Section 5612 to the local mental health advisory board and to the Director of Mental Health.

(b) The Director of Mental Health shall annually make available to the Legislature, no later than March 15, data on county performance.
(Added by Stats.1991, c. 89 (A.B.1288), § 100, eff. June 30, 1991.)

§ 5614. Protocol for meeting statutory and regulatory requirements

(a) The department, in consultation with the Compliance Advisory Committee that shall have representatives from relevant stakeholders, including, but not limited to, local mental health departments, local mental health boards and commissions, private and community–based providers, consumers and family members of consumers, and advocates, shall establish a protocol for ensuring that local mental health departments meet statutory and regulatory requirements for the provision of publicly funded community mental health services provided under this part.

(b) The protocol shall include a procedure for review and assurance of compliance for all of the following elements, and any other elements required in law or regulation:

(1) Financial maintenance of effort requirements provided for under Section 17608.05.

(2) Each local mental health board has approved procedures that ensure citizen and professional involvement in the local mental health planning process.

(3) Children's services are funded pursuant to the requirements of Sections 5704.5 and 5704.6.

(4) The local mental health department complies with reporting requirements developed by the department.

(5) To the extent resources are available, the local mental health department maintains the program principles and the array of treatment options required under Sections 5600.2 to 5600.9, inclusive.

(6) The local mental health department meets the reporting required by the performance outcome systems for adults and children.

(c) The protocol developed pursuant to subdivision (a) shall focus on law and regulations and shall include, but not be limited to, the items specified in subdivision (b). The protocol shall include data collection procedures so that state review and reporting may occur. The protocol shall also include a procedure for the provision of technical assistance, and formal decision rules and procedures for enforcement consequences when the requirements of law and regulations are not met. These standards and decision rules shall be established through the consensual stakeholder process established by the department.
(Added by Stats.2000, c. 93 (A.B.2877), § 51, eff. July 7, 2000. Amended by Stats.2001, c. 159 (S.B.662), § 191.)

§ 5614.5. Indicators of access and quality

(a) The department, in consultation with the Quality Improvement Committee which shall include representatives of the California Mental Health Planning Council, local mental health departments, consumers and families of consumers, and other stakeholders, shall establish and measure indicators of access and quality to provide the information needed to continuously improve the care provided in California's public mental health system.

(b) The department in consultation with the Quality Improvement Committee shall include specific indicators in all of the following areas:

(1) Structure.

(2) Process, including access to care, appropriateness of care, and the cost effectiveness of care.

(3) Outcomes.

(c) Protocols for both compliance with law and regulations and for quality indicators shall include standards and formal decision rules for establishing when technical assistance, and enforcement in the case of compliance, will occur. These standards and decision rules shall be established through the consensual stakeholder process established by the department.

(d) The department shall report to the legislative budget committees on the status of the efforts in Section 5614 and this section by March 1, 2001. The report shall include presentation of the protocols and indicators developed pursuant to this section or barriers encountered in their development.
(Added by Stats.2000, c. 93 (A.B.2877), § 52, eff. July 7, 2000.)

§ 5615. Maintenance of existing programs; state aid

If they so elect, cities that were operating independent public mental health programs on January 1, 1990, shall continue to receive direct payments.
(Added by Stats.1968, c. 989, p. 1916, § 2, operative July 1, 1969. Amended by Stats.1991, c. 89 (A.B.1288), § 102, eff. June 30, 1991.)

§ 5616. Authority of city to own, finance and operate mental health program

Nothing in this part shall prevent any city or combination of cities from owning, financing, and operating a mental health program.
(Added by Stats.1968, c. 989, p. 1916, § 2, operative July 1, 1969. Amended by Stats.1991, c. 89 (A.B.1288), § 104, eff. June 30, 1991.)

§ 5618. Provision of information to clients, family members, and caregivers

Mental health plans shall be responsible for providing information to potential clients, family members, and caregivers regarding specialty Medi–Cal mental health services offered by the mental health plans upon request of the individual. This information shall be written in a manner that is easy to understand and is descriptive of the complete services offered.
(Added by Stats.2000, c. 93 (A.B.2877), § 53, eff. July 7, 2000.)

§ 5622. Aftercare plan; requirements; refusal

(a) A licensed inpatient mental health facility, as described in subdivision (c) of Section 1262 of the Health and Safety Code, operated by a county or pursuant to a county contract, shall, prior to the discharge of any patient who was placed in the facility, prepare a written aftercare plan. The aftercare plan, to the extent known, shall specify the following:

(1) The nature of the illness and followup required.

(2) Medications, including side effects and dosage schedules. If the patient was given an informed consent form with his or her medications, the form shall satisfy the requirement for information on side effects of the medications.

(3) Expected course of recovery.

(4) Recommendations regarding treatment that are relevant to the patient's care.

(5) Referrals to providers of medical and mental health services.

(6) Other relevant information.

(b) Any person undergoing treatment at a facility under the Lanterman–Petris–Short Act or a county Bronzan–McCorquodale facility and the person's conservator, guardian, or other legally authorized representative shall be given a written aftercare plan prior to being discharged from the facility. The person shall be advised by facility personnel that he or she may designate another person to receive a copy of the aftercare plan.

(c) A copy of the aftercare plan shall be given to any person designated under subdivision (b). A patient who is released from any local treatment facility described in subdivision (c) of Section 1262 of the Health and Safety Code on a voluntary basis may refuse any or all services under the written aftercare plan.

(Formerly § 5620, added by Stats.1971, c. 1609, p. 3463, § 1. Renumbered § 5622 and amended by Stats.1972, c. 694, p. 1275, § 1; Stats.1972, c. 1220, p. 2356, § 1, eff. Dec. 11, 1972. Amended by Stats.1974, c. 566, p. 1385, § 4; Stats.1979, c. 373, p. 1398, § 366. Amended by Stats.1987, c. 835, § 2; Stats.1991, c. 89 (A.B.1288), § 106, eff. June 30, 1991; Stats.1997, c. 512 (A.B.482), § 2.)

§ 5623.5. Access to prescribed medication

Commencing October 1, 1991, and to the extent resources are available, no county shall deny any person receiving services administered by the county mental health program access to any medication which has been prescribed by the treating physician and approved by the federal Food and Drug Administration and the Medi–Cal program for use in the treatment of psychiatric illness.

(Added by Stats.1991, c. 89 (A.B.1288), § 107, eff. June 30, 1991.)

Chapter 2 THE COUNTY PERFORMANCE CONTRACT

§ 5650. County mental health services contract; proposal

(a) The board of supervisors of each county, or boards of supervisors of counties acting jointly, shall adopt, and submit to the Director of Mental Health in the form and according to the procedures specified by the director, a proposed annual county mental health services performance contract for mental health services in the county or counties.

(b) The State Department of Mental Health shall develop and implement the requirements, format, procedure, and submission dates for the preparation and submission of the proposed performance contract.

(Added by Stats.1991, c. 89 (A.B.1288), § 111, eff. June 30, 1991.)

Contingency

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5650.5. References to Short–Doyle plan

Any other provision of law referring to the county Short–Doyle plan shall be construed as referring to the county mental health services performance contract described in this chapter.

(Added by Stats.1991, c. 89 (A.B.1288), § 113, eff. June 30, 1991.)

§ 5651. Performance contract; contents

The proposed annual county mental health services performance contract shall include all of the following:

(a) The following assurances:

(1) That the county is in compliance with the expenditure requirements of Section 17608.05.

(2) That the county shall provide the mental health services required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and will comply with all requirements of that chapter.

(3) That the county shall provide services to persons receiving involuntary treatment as required by Part 1 (commencing with Section 5000) and Part 1.5 (commencing with Section 5585).

(4) That the county shall comply with all requirements necessary for Medi–Cal reimbursement for mental health treatment services and case management programs provided to Medi–Cal eligible individuals, including, but not limited to, the provisions set forth in Chapter 3 (commencing with Section 5700), and that the county shall submit cost reports and other data to the department in the form and manner determined by the department.

(5) That the local mental health advisory board has reviewed and approved procedures ensuring citizen and professional involvement at all stages of the planning process pursuant to Section 5604.2.

(6) That the county shall comply with all provisions and requirements in law pertaining to patient rights.

(7) That the county shall comply with all requirements in federal law and regulation pertaining to federally funded mental health programs.

(8) That the county shall provide all data and information set forth in Sections 5610 and 5664.

(9) That the county, if it elects to provide the services described in Chapter 2.5 (commencing with Section 5670), shall comply with guidelines established for program initiatives outlined in that chapter.

(10) Assurances that the county shall comply with all applicable laws and regulations for all services delivered.

(b) The county's proposed agreement with the department for state hospital usage as required by Chapter 4 (commencing with Section 4330) of Part 2 of Division 4.

(c) Performance contracts required by this chapter shall include any contractual requirements needed for any program initiatives utilized by the county contained within this part. In addition, any county may choose to include contract provisions for other state directed mental health managed programs within this performance contract.

(d) Other information determined to be necessary by the director, to the extent this requirement does not substantially increase county costs.

(Added by Stats.1991, c. 89 (A.B.1288), § 115, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 45, eff. Oct. 7, 1991.)

§ 5651.2. Simplified performance contract; mandatory and discretionary provisions

For the 1991–92 fiscal year, each county shall, no later than October 1, 1991, submit to the department a simplified performance contract. The performance contract shall contain information that the department determines necessary for the provision and funding of mental health services provided for in law. The performance contract shall include, but not be limited to, assurances necessary to ensure compliance with federal law. In addition, the performance contract may include provisions governing reimbursement to the state for costs associated with state hospitals and institutions for mental disease.

(Added by Stats.1991, c. 89 (A.B.1288), § 118, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 46, eff. Oct. 7, 1991.)

§ 5652.5. Utilization of available resources and facilities

(a) Each county shall utilize available private and private nonprofit mental health resources and facilities in the county prior to developing new county–operated resources or facilities when these private and private nonprofit mental health resources or facilities are of at least equal quality and cost as county–operated resources and facilities and shall utilize available county resources and facilities of at least equal quality and cost prior to new private and private nonprofit resources and facilities. All the available local public or private and private nonprofit facilities shall be utilized before state hospitals are used.

(b) Nothing in this section shall prevent a county from restructuring its systems of care in the manner it believes will provide the best overall care.

(Added by Stats.1991, c. 89 (A.B.1288), § 125, eff. June 30, 1991.)

§ 5652.7. Time allowed for review

A county shall have only 60 days from the date of submission of an application to review and certify or deny an application to establish a new mental health care provider. If an application requires review by the State Department of Health Services, the department shall also have only 60 days from the date of submission of the application to review and certify or deny an application to establish a new mental health care provider.

(Added by Stats.1987, c. 884, § 3.)

§ 5653. Use of appropriate local public and private organizations and state agencies, and public and private funds

In developing the county Short–Doyle plan, optimum use shall be made of appropriate local public and private organizations, community professional personnel, and state agencies. Optimum use shall also be made of federal, state, county, and private funds which may be available for mental health planning.

In order that maximum utilization be made of federal and other funds made available to the Department of Rehabilitation, the Department of Rehabilitation may serve as a contractual provider under the provisions of a county Short–Doyle plan of vocational rehabilitation services for the mentally disordered.

(Added by Stats.1971, c. 1609, p. 3463, § 3. Amended by Stats.1975, c. 1128, p. 2754, § 6; Stats.1984, c. 1327, § 30, eff. Sept. 25, 1984.)

§ 5653.1. Contracts with public or private agencies

In conducting evaluation, planning, and research activities to develop and implement the county Short–Doyle plan, counties may contract with public or private agencies.

(Added by Stats.1971, c. 1801, p. 3899, § 1.)

§ 5654. Use of Short–Doyle funds; mental problems of minors; consultation and training

In order to serve the increasing needs of children and adolescents with mental and emotional problems, county mental health programs may use funds allocated under the Short–Doyle Act for the purposes of consultation and training.

(Added by Stats.1986, c. 770, § 2.)

§ 5655. Cooperation with county officials; failure to comply with code or regulation; order to show cause; sanctions

All departments of state government and all local public agencies shall cooperate with county officials to assist them in mental health planning. The State Department of Mental Health shall, upon request and with available staff, provide consultation services to the local mental health directors, local governing bodies, and local mental health advisory boards.

If the Director of Mental Health considers any county to be failing, in a substantial manner, to comply with any provision of this code or any regulation, or with the approved county Short–Doyle plan, the director shall order the county to appear at a hearing, before the director or the director's designee, to show cause why the department should not take action as set forth in this section. The county shall be given at least 20 days' notice of such hearing. The director shall consider the case on the record established at the hearing and make final findings and decision.

If the director determines that there is or has been a failure, in a substantial manner, on the part of the county to comply with any provision of this code or any regulations or the approved county Short–Doyle plan, and that administrative sanctions are necessary, the department may invoke any, or any combination of, the following sanctions:

(a) Withhold part or all of state mental health funds from such county.

(b) Require the county to enter into negotiations for the purpose of assuring county Short–Doyle plan compliance with such laws and regulations.

(c) Bring an action in mandamus or such other action in court as may be appropriate to compel compliance. Any such action shall be entitled to a preference in setting a date for a hearing.

(Added by Stats.1971, c. 1609, p. 3463, § 3. Amended by Stats.1973, c. 142, p. 420, § 76, eff. June 30, 1973, operative July 1, 1973; Stats.1977, c. 1252, p. 4585, § 594, operative July 1, 1978; Stats.1979, c. 429, p. 1545, § 1.4, eff. Aug. 31, 1979.)

§ 5657. Contractual suppliers of mental health services; invoices; penalty for nonpayment by county

(a) The private organization or private nonprofit organization awarded a contract with the county agency to supply mental health services under this part shall provide an invoice to the county for the amount of the payment due within 60 days of the date the services are supplied, as long as that date is at least 60 days from the date the county has received distribution of mental health funds from the state.

(b) Any county that, without reasonable cause, fails to make any payment within 60 days of the required payment date to a private organization or private nonprofit organization awarded a contract with the county agency to supply mental health services under this part, for an undisputed claim which was properly executed by the claimant and submitted to the county, shall pay a penalty of 0.10 percent of the amount due, per day, from the 61st day after the required payment date.

(c) For the purposes of this section, "required payment date" means any of the following:

(1) The date on which payment is due under the terms of the contract.

(2) If a specific date is not established by contract, the date upon which an invoice is received, if the invoice specifies payment is due upon receipt.

(3) If a specific date is not established by contract or invoice, 60 days after receipt of a proper invoice for the amount of the payment due.

(d) The penalty assessed under this section shall not be paid from the Bronzan–McCorquodale program funds or county matching funds. The penalty provisions of this section shall not apply to the late payment of any federal funds or Medi–Cal funds.

(Added by Stats.1987, c. 884, § 4. Amended by Stats.1991, c. 89 (A.B.1288), § 127, eff. June 20, 1991; Stats.2004, c. 183 (A.B.3082), § 374.)

§ 5664. Reports and data

(a) County mental health systems shall provide reports and data to meet the information needs of the state.

(b) The department shall not implement this section in a manner requiring a higher level of service for state reporting needs than that which it was authorized to require prior to July 1, 1991.

(Added by Stats.1991, c. 89 (A.B.1288), § 129, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5664.5. Data to establish definitions and reporting time increments; duration of section

(a) County mental health systems shall continue to provide data required by the State Department of Mental Health to establish uniform definitions and time increments for reporting type and cost of services received by local mental health program clients.

(b) This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1994, deletes or extends the dates on which it is repealed; or until the date upon which the director informs the Legislature that the new data system is established pursuant to Section 5610, whichever is later, unless the provisions of the section are required by the federal government as a condition of funding for the Short–Doyle Medi–Cal program.

(Added by Stats.1991, c. 89 (A.B.1288), § 130, eff. June 30, 1991.)

REPEAL

Section 5664.5 is repealed by its own terms. See subd. (b).

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5665. Changes in allocation of funds among mental health services; documentation of cost–effectiveness

After the development of performance outcome measures pursuant to Section 5610, whenever a county makes a substantial change in its allocation of mental health funds among services, facilities, programs, and providers, it shall, at a regularly scheduled public hearing of the board of supervisors, document that it based its decision on the most cost–effective use of available resources to maximize overall client outcomes, and provide this documentation to the department.

(Added by Stats.1991, c. 89 (A.B.1288), § 131, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5666. Compliance review of performance contract

(a) The Director of Mental Health shall review each proposed county mental health services performance contract to determine that it complies with the requirements of this division.

(b) The director shall require modifications in the proposed county mental health services performance contract which he or she deems necessary to bring the proposed contract into conformance with the requirements of this division.

(c) Upon approval by both parties, the provisions of the performance contract required by Section 5651 shall be deemed to be a contractual arrangement between the state and county.

(Added by Stats.1991, c. 89 (A.B.1288), § 132, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5667. Community mental health centers

(a) A community mental health center shall be considered to be a licensed facility for all purposes, including all provisions of the Health and Safety Code and the Insurance Code.

(b) For purposes of this section, "community mental health center" means any entity that is one of the following:

(1) A city or county mental health program.

(2) A facility funded under the federal Community Mental Health Centers Act, contained in Subchapter 3 (commencing with Section 2681) of Chapter 33 of Title 42 of the United States Code.

(3) A nonprofit agency that has a contract with a county mental health program to provide both of the following:

(A) A comprehensive program of mental health services in an outpatient setting designed to improve the function of persons with diagnosed mental health problems pursuant to procedures governing all aspects of the program formulated with the aid of multidisciplinary staff, including physicians and surgeons, all of whom serve on quality assurance and utilization review committees.

(B) Diagnostic and therapeutic services for individuals with diagnosed mental health problems, together with related counseling.

(Added by Stats.1993, c. 788 (A.B.218), § 5, eff. Oct. 4, 1993. Amended by Stats.1995, c. 712 (S.B.227), § 2.)

Chapter 2.5 PROGRAM INITIATIVES

Article 1 COMMUNITY RESIDENTIAL TREATMENT SYSTEM

§ 5670. Legislative intent; residential treatment programs

(a) It is the intent of the Legislature to encourage the development of a system of residential treatment programs in every county which provides a range of alternatives to institutional care based on principles of residential, community–based treatment.

(b) It is further the intent of the Legislature that community residential mental health programs in the State of California be developed in accordance with the guidelines and principles set forth in this chapter. To this end, counties may implement the community residential treatment system described in this chapter either with available county allocations, or as new moneys become available.

(Added by Stats.1991, c. 89 (A.B.1288), § 134, eff. June 30, 1991.)

§ 5670.5. Residential treatment system; program criteria

Criteria for community residential treatment system programs are as follows:

(a) Facilities:

(1) Settings, whether residential or day, should be as close to a normal home environment as possible without sacrificing client safety or care.

(2) Residential treatment centers should be relatively small, preferably 15 beds or less, but in any case with the appearance of a noninstitutional setting.

(3) The individual elements of the system should, where possible, be in separate facilities, and not part of one large facility attempting to serve an entire range of clients.

(b) Staffing patterns:

(1) Staffing patterns should reflect, to the maximum extent feasible, at all levels, the cultural, linguistic, ethnic, sexual and other social characteristics of the community the facility serves.

(2) The programs should be designed to use appropriate multidisciplinary professional consultation and staff to meet the specific diagnostic and treatment needs of the clients.

(3) The programs should use paraprofessionals and persons who have been consumers of mental health services where appropriate.

(c) Programs:

(1) The programs should, to the maximum extent feasible, be designed so as to reduce the dependence on medications as a sole treatment tool. Programs in which prescriptions for medication are a component of the program should be subject to the medications–monitoring.

(2) The programs should have a rehabilitation focus which encourages the client to develop the skills to become self–sufficient and capable of increasing levels of independent functioning. Where appropriate, they should include prevocational and vocational programs.

(3) The program should encourage the participation of the clients in the daily operation of the setting in development of treatment and rehabilitation planning and evaluation.

(4) Participation in any element of the system should not preclude the involvement of clients in individual therapy. Individual therapists of clients should, where possible, be directly involved in the development and implementation of a treatment plan, including medication and day program decisions.

(d) Coordination:

The programs should demonstrate specific linkages with one another, and with the general treatment and social service system, as a whole. These connections should not be limited to the mental health system, but should include, whenever possible, community resources utilized by the general population.

(Added by Stats.1991, c. 89 (A.B.1288), § 134, eff. June 30, 1991.)

§ 5671. Residential treatment system; program elements

The following should be the programs in the community residential treatment system. These programs should be designed to provide, at every level, alternatives to institutional settings.

(a) A program for a short–term crisis residential alternative to hospitalization for individuals experiencing an acute episode or crisis requiring temporary removal from their home environment. The program should be available for admissions 24 hours a day, seven days a week. The primary focus of this program should be on reduction of the crisis, on stabilization, and on a diagnostic assessment of the person's existing support system, including recommendations for referrals upon discharge.

The services in the program should include, but not be limited to,

provision for direct family work, connections to prevocational and vocational programs, and development of a support system, including income and treatment referrals. This program should be designed for persons who would otherwise be referred to an inpatient unit, either locally or in the state hospital. This program should place an emphasis on stabilization and appropriate referral for further treatment or support services, or both.

(b) A long–term residential treatment program, with a full day treatment component as a part of the program, for persons who may require intensive support for as long as two or three years. This program should be designed to provide a rehabilitation program for the so–called "chronic" patient who needs long–term support in order to develop independent living skills. The clients in this program should be those who would otherwise be living marginally in the community with little or no service support, and who would return many times to the hospital for treatment. It should also serve those who are referred to, and maintained in, state hospitals or nursing homes because they require long–term, intensive support. This program should go beyond maintenance to provide an active rehabilitation focus for these individuals.

The services in this program should include, but not be limited to, intensive diagnostic work, including learning disability assessment, full day treatment program with an active prevocational and vocational component, special education services, outreach to develop linkages with the general social service system, and counseling to aid clients in developing the skills to move toward a less structured setting.

(c) A transitional residential program designed for persons who are able to take part in programs in the general community, but who, without the support of counseling, as well as the therapeutic community, would be at risk of returning to the hospital. This program may employ a variety of staffing patterns and should be for persons who may be expected to move toward a more independent living setting within approximately three months to one year. The clients should be expected to play a major role in the functioning of the household, and shall be encouraged to accept increasing levels of responsibility, both in the residential community, and in the community as a whole. Residents should be required to be involved in daytime activities outside of the house which are relevant to their personal goals and conducive to their achieving more self–sufficiency.

The services in this program should include, but are not limited to, counseling and ongoing assessment, development of support systems in the community, a day program which encourages interaction between clients and the community–at–large, and an activity program that encourages socialization and utilization of general community resources.

(d) A program for semisupervised, independent, but structured living arrangement for persons who do not need the intensive support of the other system programs, but who, without some support and structure, are at risk to return to a condition requiring hospitalization. The individual apartments or houses should be shared by three to five persons. These small cooperative housing units should function as independent households with direct linkages to staff support in case of emergencies, as well as for regular assessment and evaluation meetings. Individuals may use satellite housing as a transition to independent living, or may remain in this setting indefinitely in order to avoid the need for more intensive settings.

This program should be for persons who only need minimum support in order to live in the community. These individuals may require rent subsidy, as well as the backup of another system, in order to remain in this setting. The satellite units should be as normative as the general living arrangements in the communities in which they are developed.

(e) A program to provide emergency housing or respite care services, or both. These services should be designed for persons with a mental disability in need of temporary housing, but who do not require hospitalization or the more intensive support and treatment of the crisis residential program. Services provided should include, but not be limited to, advocacy, counseling, and linkages to community mental health and other human services, including referrals to vocational and housing opportunities.

(f) A day rehabilitation program which should be designed to provide structured education, training, and support services to promote the development of independent living skills and community support. Services provided should include, but not be limited to, peer support, education services, prevocational and employment services, recreational and social activities, service brokerage and advocacy, orientation to community resources, training in independent living skills, health education including medication education, individual and group counseling, education and counseling services for family members, and crisis intervention.

(g) The program for socialization centers should be designed to serve a broad range of clients, including those in the system programs, when appropriate, as well as persons living in the community in general. This program should be designed to provide regular daytime, evening, and weekend activities for persons who require long–term, structured support, but who do not receive such services in their living setting. Although the socialization center is meant to provide a maintenance support program for those individuals who only wish or require regular socialization opportunities, the programs should also provide the opportunity to develop the skills to move toward more independent functioning.

The services in this program should include, but not be limited to, outings, recreational activities, cultural events, linkages to community resources, as well as prevocational counseling, life skills training, and other rehabilitation efforts. This program should be for persons who would lose contact with a social or treatment system, or both, if left to their isolated living situation, or their ability to participate in activities for the "general public." With this level of support, persons would be able to lead full and active lives, with the opportunity to develop the skills to move toward independent living. Also included in the program should be adult education support programs which utilize community college and other adult education agencies. These services would provide opportunities to individuals throughout the community residential treatment system and in other living settings, including independent living, to develop skills necessary for independent living through the utilization of resources available to the general population.

(h) An in–home treatment program designed as an alternative to out–of–home placement for individuals who are otherwise not appropriate for, or do not choose to participate in, other elements of the community residential treatment system. This program should be designed for those individuals who would benefit most from a treatment intervention in their home environment. It is a basic premise of this element that treatment should focus on the development of family and other personal and community supports, rather than exclusively on the individual. The goal of the program should be to reintegrate the individual with the family unit, when appropriate, and with the greater community without removing the person from his or her home environment.

The service may be designed as a crisis intervention for persons experiencing an acute episode or an ongoing independent living service, or both, for persons wishing to obtain or maintain housing and services in the community. Services provided should include, but not be limited to, crisis intervention, family work, when appropriate, development of a specific treatment plan, development of an ongoing rehabilitation plan utilizing available resources in the community, and coordination with such services as case management, vocational rehabilitation, schools and other education services, and various special programs which would act as a support system for the individual.

(i) A volunteer–based companion program designed to encourage the development of personal relationships with residents of community care facilities with the goal of motivating and assisting residents to make a successful transition to independent living, or to programs of the community residential treatment system.

The service should be provided primarily by volunteers, including students as a part of a college or university curriculum, who are supervised and coordinated by trained and experienced personnel. Services provided should include, but not be limited to, recreation, one–to–one companionship, advocacy, and assistance in developing the knowledge and use of community resources, including housing and vocational services, and follow up for persons who make the transition to independent living.

(Added by Stats.1991, c. 89 (A.B.1288), § 134, eff. June 30, 1991.)

§ 5671.5. Programs to serve children and adolescents; legislative intent; criteria

It is the intent of the Legislature that programs serving children and adolescents should be established under this chapter. Such programs should follow the guidelines and principles set forth in this chapter and in addition should meet the following criteria unique to the population to be served:

(a) The programs should, to the maximum extent feasible, be designed so as to reduce the disruption and promote the reintegration of the family unit of which the child is a part.

(b) The programs should have an education focus and should demonstrate specific linkage with community education resources.

(c) The programs should contain a specific followup component.

(Added by Stats.1991, c. 89 (A.B.1288), § 134, eff. June 30, 1991.)

§ 5672. Programs to serve children and adolescents; program types; criteria; licensure requirements

The types of programs serving children and adolescents referred to in Section 5671.5 are those described in this section. The programs should meet the criteria set forth in this section and in Sections 5671 and 5671.5. Nothing in this section should be construed to waive any licensure requirement pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code) for any community care facility.

(a) A program for a short–term crisis residential alternative to hospitalization. The services in this program should include, but not be limited to, provision of direct services to the family, specific linkages with the child's educational system and community educational resources, and development of a support system, including school and treatment referrals. The program should be designed for children and adolescents who would otherwise be referred to a psychiatric inpatient unit. It should be a 24–hour program, with an emphasis on stabilization and appropriate referral for further treatment or support services.

(b) A long–term residential treatment program. This program should have an educational orientation and should reflect the principle that education be available in the least restrictive environment. The program should serve children and adolescents requiring an intensive support system for a period of six to 18 months, who would otherwise be at risk of periodic hospitalization. The program should provide coordinated intervention with the child, family unit, and community education resources, and should include aftercare services to the child and family unit to solidify gains and develop skills in linking with community services.

(c) A transitional residential program. This program may include group homes, foster homes, or homes adapted for preparing adolescents approaching majority to adjust to emancipation.

The services in this program should include, but not be limited to, coordination with community education resources to meet the child's individual need, family services designed to strengthen the family unity of which the child is a part, and aftercare services to reinforce the gains brought about by the program and assist in community adjustment.

(d) A program for a semisupervised, independent but structured living arrangement. This program should apply to older adolescents, who are either emancipated or who would not be returning home from out–of–home placement. The semisupervised living arrangement should require structured living designed to impart those skills necessary for successful independent living as described in subdivision (d) of Section 5671. Adult supervision should be available 24 hours per day.

The services should include, but not be limited to, prevocational and vocational linkages in the community, financial planning which may include rent subsidy assistance, and development of a social support system.

(e)(1) A day treatment program. This program should provide services to children and adolescents who are residing in their own homes or in out–of–home placements. Schoolsites or other noninstitutional settings are preferred for this program. A day treatment program for children should offer a multidisciplinary approach and should incorporate education, recreation, and rehabilitation activities. Services provided should be age appropriate and age specific intensive remedial programs, including education, counseling, socialization, and recreational services. To the extent feasible, the client's family should be included in these activities.

(2) Day treatment services should be designed to provide an alternative to residential placement, to provide preventive services in the early stages of family breakdown, and to reduce the need for more costly and lengthy treatment services. Aftercare services should be available to maintain gains and prevent family regression.

(f) A socialization center program. This program should provide a multidisciplinary approach and seek funding from a variety of agencies responsible for providing services, including, but not limited to, school districts and recreation departments. The services should promote community acceptance of clients and the integration of their family units. Family involvement in planning activities and developing support system linkages should be encouraged.

(g) An in–home treatment program. This program should be designed to strengthen the child's ties with the family unit and with the greater community without removing the child from his or her home environment and community educational system.

Services provided should include, but not be limited to, crisis intervention, direct family services, development of specific treatment plans, development of ongoing plans utilizing available resources in the community educational system, and special programs which act as a support system for the child and family unit.

(h) Augmentation of crisis intervention program. This program should provide specifically for evaluation, diagnosis, and disposition planning for children and adolescents in psychiatric crisis.

(i) Case management services program. This program should emphasize prevention services and should be designed to divert to noninstitutional programs children and adolescents at risk of involvement with traditional mental health institutions.

(Added by Stats.1991, c. 89 (A.B.1288), § 134, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 47, eff. Oct. 7, 1991.)

§ 5673. Napa and Riverside counties; community care facilities; pilot program; funds

(a) A five–year pilot program is hereby authorized in Napa County and Riverside County to establish a 15–bed locked facility in each county, for the provision of community care and treatment for mentally disordered persons who are placed in a state hospital or another health facility because no community placements are available to meet the needs of these patients. It is the intent of the Legislature to carefully evaluate this specific approach to determine its potential for replication in other limited jurisdictions. Participation in this pilot program by the two counties shall be on a voluntary basis. The pilot program shall be implemented notwithstanding the

following licensure requirements enforced by the State Department of Social Services:

(1) Subdivision (a) of Section 1502 of the Health and Safety Code, which defines a community care facility as providing nonmedical care.

(2) Subdivision (a) of Section 1505 of the Health and Safety Code, which exempts any health facility, as defined by Section 1250 of the Health and Safety Code, from licensure under the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code).

(3) Section 1507 of the Health and Safety Code, which limits the provision of medical services in community care facilities to incidental medical services.

(4) Paragraph (5) of subdivision (a) of Section 80001 of Title 22 of the California Code of Regulations, which states that an adult residential facility provides nonmedical care.

(5) Paragraph (7) of subdivision (a) of Section 80072 of Title 22 of the California Code of Regulations, which relates to a client's right not to be locked in any room, building, or facility premises. However, for purposes of this section, a client shall not be locked in any room.

(b) Clients provided care within these pilot facilities shall be conservatees as defined by Section 5350 who, prior to the establishment of this program, either received care at a state hospital or were placed in facilities for the mentally disordered.

(c) Standards for services provided shall be developed by each county mental health director, in consultation with, and approved by, the State Department of Mental Health and monitored regularly by the department for compliance with these standards. These services shall be on a 24–hour basis in a therapeutic homelike environment. The services shall cover the full range of the social rehabilitation model concept, including, but not limited to, the following:

(1) Counseling.

(2) Day treatment.

(3) Crisis intervention.

(4) Vocational training.

(5) Medication evaluation and management by a licensed physician and other licensed professional and paraprofessional staff who possess a valid license or certificate to perform this function.

(d) Administration of medication and monitoring of medication shall occur notwithstanding statutory and regulatory licensure requirements for community care facilities to the contrary. Standards for use of medications shall be developed and monitored by the State Department of Mental Health.

(e) The facilities shall be licensed and monitored by the State Department of Social Services and shall comply with all licensing requirements except those specifically exempted by this section. In addition, no less than 75 square feet of outdoor space per client shall be made available for client use. The State Department of Social Services shall conduct inspections of the facilities pursuant to Section 1533 of the Health and Safety Code and shall be given immediate access to the facilities.

(f) In staffing the pilot program, each county board of supervisors shall give full consideration to each potential means of implementation, including, but not limited to, the clinical, programmatic, and economic benefits and advantages of each alternative. The pilot program shall meet all of the staffing criteria of subdivision (b) of Section 5670.5. The staff shall use and document the actions of a multidisciplinary professional consultation staff to meet the specific diagnostic and treatment needs of clients. The staff shall include, but need not be limited to, a licensed psychiatrist, a psychologist, a social worker, and a psychiatric technician. The staff may also include a licensed vocational nurse. One or more of the following licensed professionals shall be present at the facility at all times:

(1) A psychiatrist or psychologist.

(2) A registered psychiatric nurse.

(3) A psychiatric technician.

(4) A licensed vocational nurse.

(g) Protocols and training shall be established for licensed vocational nurses employed by these facilities.

(h) The State Department of Mental Health shall certify the program content in each county and monitor the program's functions on a regular basis and the State Department of Social Services shall regularly evaluate the facilities in accord with its statutory and regulatory licensure functions, pursuant to subdivisions (d) and (e).

(i) The pilot program shall be deemed successful if it demonstrates both of the following:

(1) That costs of the program are no greater than public expenditures for providing alternative services to the clients served by the program.

(2) That the benefit to the clients, as described in subdivision (h), is improved by the program.

(j) Commencement of the pilot program in each county pursuant to this section shall be contingent upon the county and the department identifying funds for this purpose, as described in a financial plan that is approved in advance by the Department of Finance.

(Added by Stats.1992, c. 434 (A.B.2756), § 1. Amended by Stats.1994, c. 462 (S.B.1365), § 2; Stats.1995, c. 223 (A.B.245), § 1, eff. July 31, 1995; Stats.2001, c. 745 (S.B.1191), § 237, eff. Oct. 12, 2001.)

§ 5675. Mental health rehabilitation center; pilot project

(a) Subject to Section 5768, Placer County and up to 15 other counties may establish a pilot project for up to six years, to develop a shared mental health rehabilitation center for the provision of community care and treatment for persons with mental disorders who are placed in a state hospital or another health facility because no community placements are available to meet the needs of these patients. Participation in this pilot project by the counties shall be on a voluntary basis.

(b)(1) The department shall establish, by emergency regulation, the standards for the pilot project, and monitor the compliance of the counties with those standards. Participating counties, in consultation with the department, shall be responsible for program monitoring.

(2) The department, in conjunction with the county mental health directors, shall provide an interim report to the Legislature within three years of the commencement of operation of the facilities authorized pursuant to this section regarding the progress and cost effectiveness demonstrated by the pilot project. The department, in conjunction with the county mental health directors, shall report to the Legislature within five years of the commencement of operation of the facilities authorized pursuant to this section regarding the progress and cost effectiveness demonstrated by the pilot project. The report shall evaluate whether the pilot project is effective based on clinical indicators, and is successful in preventing future placement of its clients in state hospitals or other long–term health facilities, and shall report whether the cost of care in the pilot facilities is less than the cost of care in state hospitals or in other long–term health facility options. The evaluation report shall include, but not be limited to, an evaluation of the selected method and the effectiveness of the pilot project staffing, and an analysis of the effectiveness of the pilot project at meeting all of the following objectives:

(A) That the clients placed in the facilities show improved global assessment scores, as measured by preadmission and postadmission tests.

(B) That the clients placed in the facilities demonstrate improved functional behavior as measured by preadmission and postadmission tests.

(C) That the clients placed in the facilities have reduced medication levels as determined by comparison of preadmission and postadmission records.

(3) The pilot project shall be deemed successful if it demonstrates both of the following:

(A) The costs of the program are no greater than public expenditures for providing alternative services to the clients served by the project.

(B) That the benefit to the clients, as described in this subdivision, is improved by the project.

(c) The project shall be subject to existing regulations of the State Department of Health Services applicable to health facilities that the State Department of Mental Health deems necessary for fire and life safety of persons with mental illness.

(d) The department shall consider projects proposed by other counties under Section 5768.

(e)(1) Clients served by the project shall have all of the protections and rights guaranteed to mental health patients pursuant to the following provisions of law:

(A) Part 1 (commencing with Section 5000) and this part.

(B) Article 5 (commencing with Section 835), Article 5.5 (commencing with Section 850), and Article 6 (commencing with Section 860) of Chapter 4 of Title 9 of the California Code of Regulations.

(2) Clients shall have access to the services of a county patients' rights advocates as provided in Chapter 6.2 (commencing with Section 5500) of Part 1.

(Added by Stats.1994, c. 678 (S.B.2017), § 1. Amended by Stats.1998, c. 686 (A.B.2682), § 1; Stats.2000, c. 93 (A.B.2877), § 54, eff. July 7, 2000; Stats.2001, c. 171 (A.B.430), § 29, eff. August 10, 2001.)

§ 5675.1. Civil sanctions

(a) In accordance with subdivision (b), the department may establish a system for the imposition of prompt and effective civil sanctions for long–term care facilities licensed or certified by the department, including facilities licensed under the provisions of Sections 5675 and 5768, and including facilities certified as providing a special treatment program under Sections 72443 to 72474, inclusive, of Title 22 of the California Code of Regulations.

(b) If the department determines that there is or has been a failure, in a substantial manner, on the part of any such facility to comply with the applicable laws and regulations, the director may impose the following sanctions:

(1) A plan of corrective action that addresses all failure identified by the department and includes timelines for correction.

(2) A facility that is issued a plan of corrective action, and that fails to comply with the plan and repeats the deficiency, may be subject to immediate suspension of its license or certification, until the deficiency is corrected, when failure to comply with the plan of correction may cause a health or safety risk to residents.

(c) The department may also establish procedures for the appeal of an administrative action taken pursuant to this section, including a plan of corrective action or a suspension of license or certification.

(Added by Stats.2000, c. 93 (A.B.2877), § 55, eff. July 7, 2000.)

§ 5675.2. Application or renewal of license to operate mental health rehabilitation center; fees; amount; expiration date; deposit of fees

(a) Commencing January 1, 2005, each new and renewal application for a license to operate a mental health rehabilitation center shall be accompanied by an application or renewal fee.

(b) The amount of the fees shall be determined and collected by the State Department of Mental Health, but the total amount of the fees collected shall not exceed the actual costs of licensure and regulation of the centers, including, but not limited to, the costs of processing the application, inspection costs, and other related costs.

(c) Each license or renewal issued pursuant to this chapter shall expire 12 months from the date of issuance. Application for renewal of the license shall be accompanied by the necessary fee and shall be filed with the department at least 30 days prior to the expiration date. Failure to file a timely renewal may result in expiration of the license.

(d) License and renewal fees collected pursuant to this section shall be deposited into the General Fund.

(Added by Stats.2004, c. 509 (S.B.1745), § 2.)

§ 5676. Evaluation and monitoring plan

(a) The department, in conjunction with the State Department of Health Services, shall develop a state–level plan for a streamlined and consolidated evaluation and monitoring program for the review of skilled nursing facilities with special treatment programs. The plan shall provide for consolidated reviews, reports, and penalties for these facilities. The plan shall include the cost of, and a timeline for implementing, the plan. The plan shall be developed in consultation with stakeholders, including county mental health programs, consumers, family members of persons residing in long–term care facilities who have serious mental illness, and long–term care providers. The plan shall review resident safety and quality programming, ensure that long–term care facilities engaged primarily in diagnosis, treatment, and care of persons with mental diseases are available and appropriately evaluated, and ensure that strong linkages are built to local communities and other treatment resources for residents and their families. The plan shall be submitted to the Legislature on or before March 1, 2001.

(b) The State Department of Health Services shall forward to the State Department of Mental Health copies of citations issued to a skilled nursing facility that has a special treatment program certified by the State Department of Mental Health.

(Added by Stats.2000, c. 93 (A.B.2877), § 56, eff. July 7, 2000.)

§ 5676.5. Use of funds; required contents of applications

(a) It is the intent of the Legislature to ensure that funds allocated to establish or enhance mental health programs are used to integrate the new or enhanced program into an existing system of care.

(b) Counties that apply for funds to establish or enhance their mental health service system shall document, in the application process, how the new funds blend into an existing system of care and do not supplant existing expenditures.

(c) Applications shall include plans for services and supports, and shall specify how the new or enhanced program blends into an existing array of services. Applications shall demonstrate how a collaborative process involving clients, family members, and other system stakeholders was used to develop the proposal.

(d) Applications shall include a commitment to outcome reporting, as defined by the department, including client benefit outcomes, client and family member satisfaction, system of care access, cost savings, cost avoidance, and cost effectiveness outcomes that measure both short– and long–term cost savings.

(e) Applications shall demonstrate, when appropriate, how the county intends to continue the new or enhanced program when the grant funds have ended.

(Added by Stats.2000, c. 93 (A.B.2877), § 57, eff. July 7, 2000.)

Article 2 COMMUNITY SUPPORT SYSTEM FOR HOMELESS MENTALLY DISABLED PERSONS

§ 5680. Establishment of support system

In order to assist homeless mentally disabled persons to secure, stabilize, and maintain safe and adequate living arrangements in the community, the Legislature hereby establishes the Community Support System for Homeless Mentally Disabled.

(Added by Stats.1991, c. 611 (A.B.1491), § 49, eff. Oct. 7, 1991.)

§ 5681. Legislative intent

(a) It is the intent of the Legislature that when funds are made available, counties should assure the delivery of long–range services and community support assistance to homeless mentally disabled persons and those at risk of becoming homeless.

(b) It is further the intent of the Legislature that specific outreach and service priority be given under this chapter to homeless mentally disabled persons not served by any local or state programs as of September 30, 1985.
(Added by Stats.1991, c. 611 (A.B.1491), § 49, eff. Oct. 7, 1991.)

§ 5682. Goal of community support system

The goal of the community support system is to assure that needed community services are provided to homeless mentally disabled persons and those at risk of becoming homeless to stabilize, maintain, and enhance their living in the community. All services of the community support system are offered to these persons on a voluntary basis. The active participation of the clients being provided services is encouraged at all times. Programs are designed to be accessible to the clients intended to be served. No individual service offered should be contingent upon the acceptance of any other community support service or mental health treatment.
(Added by Stats.1991, c. 611 (A.B.1491), § 49, eff. Oct. 7, 1991.)

§ 5683. Function of support system; services available

The function of the community support system is to conduct active outreach to homeless mentally disabled persons, to secure and maintain income, housing, food, and clothing for clients, and to develop social skills and prevocational and vocational skills on a voluntary basis. Each community support system is based upon the range of services as may be necessary to meet a client's needs:

(a) Personal assistance to secure and maintain housing, food, clothing, income, and health benefits.

(b) Accessing social and vocational skill development activities when they are available, case management, and crisis intervention, with a focus on finding alternatives to acute inpatient hospital care, services when they are needed.
(Added by Stats.1991, c. 611 (A.B.1491), § 49, eff. Oct. 7, 1991.)

§ 5683.5. Temporary funds to homeless clients; amount; recoupment of payments

Community support systems may provide temporary funds to their homeless clients for their personal incidental living needs while the clients are in residential placement. Up to seventy–five dollars ($75) may be made available monthly to each client for this purpose. Local mental health programs shall, to the extent possible, recoup payments from clients after they become eligible for a governmental assistance program, including, but not limited to, general relief or SSI/SSP funds or otherwise become financially able to repay the county community support system.
(Added by Stats.1991, c. 611 (A.B.1491), § 49, eff. Oct. 7, 1991.)

§ 5685. County provision of services; contracts with public or private agencies

Counties may provide specific services, contract with a public or private agency, or a combination of both. Nothing contained in this article shall prevent a county from developing a consortium model which involves a number of providers performing specific functions. If a county decides to contract out a portion or all of the community support program functions, priority shall be given to providers, public or private, that have demonstrated an ability and desire to the county to work with the population intended to be served and which possess the management skills needed to perform the functions they propose to perform.
(Added by Stats.1991, c. 611 (A.B.1491), § 49, eff. Oct. 7, 1991.)

§ 5685.5. Finances of mentally ill persons; management services by public guardian; records

(a) A county may contract with the local office of the public guardian to receive and manage income and benefits for mentally ill persons, regardless of whether the persons are under conservatorship. The case management services described in this section shall be provided only with the consent of the client. The public guardian, under the contracts, may perform functions intended to meet the goals of the community support system listed in Section 5683, and may also include, but not be limited to, all of the following case management services:

(1) Outreach and casefinding to locate mentally ill persons in need of services.

(2) Establishing liaison with charitable organizations which serve mentally ill persons.

(3) Assistance in applying for and obtaining public assistance benefits for which they are eligible.

(b) Any office of the public guardian contracting with the county to provide these management services shall maintain a record of those individuals being assisted, including information about whether the individual is under conservatorship, the type of service assistance provided by the office of the public guardian, and any agencies with which the office of the public guardian is coordinating efforts.
(Added by Stats.1991, c. 611 (A.B.1491), § 49, eff. Oct. 7, 1991.)

§ 5686. Management of SSI/SSP funds

Whenever a county believes that a mentally disabled person may be unable to manage his or her SSI/SSP funds, the county mental health program shall advise the person that he or she may have a trusted family member, relative or friend designated as their representative payee under the SSI/SSP program.
(Added by Stats.1991, c. 611 (A.B.1491), § 49, eff. Oct. 7, 1991.)

§ 5686.5. Use of existing resources; management by client of personal funds

In order to make the most efficient use of the public funds appropriated for this purpose, counties are encouraged to maximize the use of existing public and private community resources. If voluntarily requested by the client, the community support agency shall help the client learn to manage his or her own money. Any SSI/SSP money, or other personal funds, if managed by the program or by the local office of the public guardian, shall, at all times, be considered as the client's money. Nothing in this section, however, shall prevent a client from purchasing residential care with SSI/SSP funds.
(Added by Stats.1991, c. 611 (A.B.1491), § 49, eff. Oct. 7, 1991.)

§ 5688.6. Unexpended funds; transfers and appropriations

Any and all funds appropriated for the homeless mentally disabled which have been determined to be unexpended and unencumbered two years after the date the funds were appropriated shall be transferred to the Department of Housing and Community Development. The amount of transfer shall be determined after the State Department of Mental Health settles county cost reports for the fiscal year the funds were appropriated. The funds transferred to the Department of Housing and Community Development shall be administered in accordance with that department's Special Users Housing Rehabilitation or Emergency Shelter programs to provide low–income transitional and long–term housing for homeless mentally disabled persons. Special priority shall be given to project proposals for homeless mentally disabled persons in the same county from which the funds for the support of the community support system were originally allocated.
(Added by Stats.1991, c. 611 (A.B.1491), § 49, eff. Oct. 7, 1991.)

Article 2.5 OLDER ADULTS SYSTEM OF CARE MENTAL HEALTH DEMONSTRATION PROJECT

§ 5689. Older Adults System of Care Demonstration Project

(a) The State Department of Mental Health shall establish and administer an Older Adults System of Care Demonstration Project, subject to funds appropriated for this purpose, that provides support and funding to develop model systems of care to serve the target population specified in Section 5689.2. Funds appropriated for purposes of this article shall be used to support pilot projects that address the specific needs of older adults with mental illness by testing

existing and new models for coordinated, comprehensive service delivery.

(b) The project shall be designed to encourage the development and testing of a coordinated, consumer–focused, comprehensive mental health system of care consistent with the recommendations contained in the California Mental Health Master Plans' Older Adult Chapter.

(Added by Stats.2000, c. 93 (A.B.2877), § 58, eff. July 7, 2000.)

§ 5689.1. Steering committee

The department shall establish a steering committee for the purposes of this article.

(Added by Stats.2000, c. 93 (A.B.2877), § 58, eff. July 7, 2000.)

§ 5689.2. Target population

(a) The target population to be served pursuant to this article shall be adults who are 60 years of age or older, diagnosed with a mental disorder, as defined by the most current edition of the Diagnostic and Statistical Manual of Mental Disorders, who have a functional impairment, and who meet any of the following criteria:

(1) Are severely and persistently disabled.

(2) Are acutely disabled.

(3) Are impacted by disasters or local emergencies.

(b) For purposes of this article, "functional impairment" means a being substantially impaired in major life activities because of a mental disorder in at least two of the following areas on a continuing or intermittent basis:

(1) Independent living.

(2) Social and family relationships.

(3) Vocational skills, employment, or leisure activities.

(4) Basic living skills.

(5) Money management.

(6) Self–care capacities.

(7) Physical condition.

(Added by Stats.2000, c. 93 (A.B.2877), § 58, eff. July 7, 2000.)

§ 5689.3. Proposals and grants

The department shall seek proposals and competitively award grants to local mental health departments for a period of up to three years to implement this demonstration project. Grantees shall be representative of different geographic areas of the state to the extent resources are available. The department shall encourage multicounty collaboration.

(Added by Stats.2000, c. 93 (A.B.2877), § 58, eff. July 7, 2000.)

§ 5689.4. Mental Health and Aging Advisory Coalition

Grantees shall establish or identify a Mental Health and Aging Advisory Coalition comprised of pilot project participants, public and private sector service providers, senior service consortiums, commissions, boards, and advisory councils, consumers and family members of consumers, mental health advocates, and other stakeholders. This coalition shall be advisory to the county mental health department. Coalition participants may include, but are not limited to, area agencies on aging, adult day and adult day health care programs, senior centers, public and private sector health programs, mental health, aging, social service, legal service, and public guardian programs, conservators, drug and alcohol programs, senior ombudsmen, residential care facility operators, family caregivers, family caregiver service providers, and other stakeholders.

(Added by Stats.2000, c. 93 (A.B.2877), § 58, eff. July 7, 2000.)

§ 5689.5. Identification of collaborative efforts; project goals and outcome measurements

(a) Each grantee shall identify collaborative efforts it will undertake to link the Older Adult Mental Health System of Care with other related planning and implementation efforts occurring within the county, including, but not limited to, Long Term Care Integration Pilot Project activities pursuant to Article 4.3 (commencing with Section 14139.05) of Chapter 7 of Part 3 of Division 9.

(b) Each grantee shall define its project goals and establish client and system outcome measurements in collaboration with the department.

(Added by Stats.2000, c. 93 (A.B.2877), § 58, eff. July 7, 2000.)

§ 5689.6. Common data elements

The department, in collaboration with the California Mental Health Planning Council and the grantees, shall identify a set of common data elements that will be used to collect, analyze, and measure performance among grantees.

(Added by Stats.2000, c. 93 (A.B.2877), § 58, eff. July 7, 2000.)

§ 5689.7. Evaluations

(a) To the extent funds are available, evaluation shall be conducted both by the participating county evaluation staff of each participating county and by an independent evaluator contracted for by the department.

(b) Evaluation at both the local and state levels shall assess the extent to which:

(1) The county system of care is serving the targeting population.

(2) Timely performance data related to client outcomes and cost avoidance is collected, analyzed, and reported.

(3) System of care components are implemented as intended.

(4) Information is collected that documents needs for future planning.

(Added by Stats.2000, c. 93 (A.B.2877), § 58, eff. July 7, 2000.)

§ 5689.8. Project reports and recommendations

The department shall provide periodic progress reports and recommendations on the status of the Demonstration Project provided for in this article to the Long Term Care Coordination Council pursuant to Section 12803.2 of the Government Code.

(Added by Stats.2000, c. 93 (A.B.2877), § 58, eff. July 7, 2000.)

§ 5689.9. Additional progress reports

The department shall provide periodic progress reports on the status of the demonstration projects to all Demonstration Project participants and mental health directors to increase statewide awareness about mental health service development for older adults. The department may provide copies of these reports to other individuals or entities.

(Added by Stats.2000, c. 93 (A.B.2877), § 58, eff. July 7, 2000.)

Article 3 COMMUNITY VOCATIONAL REHABILITATION SYSTEM

§ 5690. Legislative intent; establishment of services

It is the intent of the Legislature to, encourage the establishment in each county of a system of community vocational rehabilitation and employment services, for persons with serious psychiatric disabilities. It is further the intent of the Legislature that there be a range of available services whenever possible in each county based on the principle that work is an essential element in the local mental health treatment and support system.

(Added by Stats.1985, c. 1286, § 9, eff. Sept. 30, 1985. Amended by Stats.1991, c. 89 (A.B.1288), § 157, eff. June 30, 1991.)

§ 5691. Implementation; funds

(a) Counties may implement the community vocational rehabilitation system described in this chapter with existing county allocations, funds available from the Department of Rehabilitation and other state and federal agencies.

(b) It is the intent of the Legislature that on an annual basis five hundred thousand dollars ($500,000), or 17 percent, whichever is less, of the total federal funds available to the State of California pursuant to Section 611 of the Stewart B. McKinney Homeless Assistance Act, Public Law 100–77 (42 U.S.C. Sec. 290aa) shall be used to fund services pursuant to this chapter for homeless mentally disabled persons and those at risk of becoming homeless who have been identified pursuant to Chapter 2.6 (commencing with Section 5680).

Counties may not use these funds to provide services, including, but not limited to, vocational services, which could be funded by the Department of Rehabilitation.

(Added by Stats.1985, c. 1286, § 9, eff. Sept. 30, 1985. Amended by Stats.1988, c. 1449, § 2, operative July 1, 1989; Stats.1991, c. 89 (A.B.1288), § 158, eff. June 30, 1991.)

§ 5692. Implementation and coordination of interagency agreements; role of department of mental health

The State Department of Mental Health shall, to the extent resources are available, have responsibility for the provision of technical assistance, maximizing federal revenue, and ensuring coordination with other state agencies including implementing and coordinating interagency agreements between the Department of Rehabilitation and the State Department of Mental Health.

(Added by Stats.1991, c. 89 (A.B.1288), § 160, eff. June 30, 1991.)

§ 5692.5. Programs; types

Programs that constitute the community vocational rehabilitation system are of the following types:

(a) Prevocational programs should be, but are not limited to, components of day treatment programs, socialization and activity centers, board–and–care facilities, and skilled nursing–special treatment programs. Prevocational programs may use individual and group counseling, educational groups, volunteer service programs, and other modalities to emphasize to individuals the value of work and their right to employment.

(b) Vocational programs providing linkage and coordination for the system and which provide the following:

(1) Information, outreach, and referral services which provide ongoing liaison with assessment prevocational programs.

(2) Intake and evaluation services which may use vocational testing and analysis of work history to identify vocational strengths, weaknesses, and needs. The assessment findings should be used by the client and the program to negotiate the goals and objectives of an individual vocational plan.

(3) Work experience programs which consist of time–limited work opportunities that enable participants to develop work skills and establish a work history. These programs may include, but not be limited to, agency–operated businesses, work placements in the community, or other activities that provide a realistic work environment.

(4) Individual and group counseling services which are separated from the work experience component; individual counseling to assist clients in resolving problems related to the work situation, to update and renegotiate the individual vocational plan, and to assist clients with nonwork–related problems that affect their participation in the program; group counseling to address Social Security Administration rules and regulations: the effects of medication on work performance, the relationship between work and mental health, attributes and attitudes necessary for successful employment, job–seeking skills, and other related topics.

(5) Job development, placement, and referral services which assist clients in the following areas: obtaining competitive employment; admission to job training or education programs; referral to the Department of Rehabilitation; agency operated competitive employment programs; governmental and private sector affirmative action hiring programs for the disabled; or other specialized employment programs. If employment, training, or education programs are not suitable for a client, the client should be actively referred back to a prevocational program or other mental health program that best meets his or her current needs.

(6) Support services which may include peer support groups and job clubs to assist clients in obtaining and maintaining employment; ongoing client counseling and placement followup; employer training, consultation, and placement followup services; and consultation services to prevocational programs.

(7) The preferred method to deliver the vocational rehabilitation services described in this section is supported employment.

(Formerly § 5693, added by Stats.1985, c. 1286, § 9, eff. Sept. 30, 1985. Renumbered § 5692.5 and amended by Stats.1991, c. 89 (A.B.1288), § 161, eff. June 30, 1991.)

§ 5693. Development principles

The following principles should guide development of community vocational rehabilitation systems:

(a) Work:

(1) Work should be meaningful, necessary, and have value to the individual performing it.

(2) For individuals participating in vocational programs every effort should be made to pay them the minimum wage. However, in all cases, wages paid shall be in compliance with all relevant state and federal labor laws.

(3) That work will result in the development of attributes that will enhance further employability.

(b) Staff:

(1) Staffing patterns at all levels should reflect the cultural, linguistic, ethnic, racial, disability, sexual, and other social characteristics of the community the program serves.

(2) All participating programs should take affirmative action to encourage the application and employment of consumers and former consumers of the mental health system at all program levels.

(3) Programs should be designed to use multidisciplinary professional consultation and staff to meet the specific needs of clients.

(4) When operating a business enterprise, programs should employ individuals with the business, management, supervisorial, trade, and occupational skills necessary for successful operation.

(5) Programs should, where appropriate, employ paraprofessionals.

(6) Programs should develop and implement staff training and development plans for personnel at all levels.

(c) Facilities:

(1) The individual elements of the system should, where possible, be in separate facilities.

(2) Facilities housing vocational and employment programs should be modeled on competitive businesses operating in the community.

(3) Facilities shall be in compliance with all relevant state and federal safety, health, and accessibility regulations.

(d) System:

(1) Counties developing a community vocational rehabilitation system should utilize existing program resources to develop prevocational programs and a referral base for vocational programs.

(2) Individual programs operate most effectively within the context of a complete system. Counties undertaking development of a community vocational rehabilitation system should commit themselves to the implementation of regionally integrated prevocational and vocational programs.

(3) Rural counties, where appropriate, should be encouraged to develop intercounty systems, or to integrate their programs with programs serving other target populations.

(4) The system should have the capacity to deliver services tailored to individual needs. If a program is found to be unsuitable for a client at a specific time, an explanation will be provided to the client and he or she shall be referred to a more suitable program and encouraged to reapply. The system should have policies designed to meet changing client needs and to work with individuals over time to develop their vocational potential.

(Formerly § 5694, added by Stats.1985, c. 1286, § 9, eff. Sept. 30, 1985. Renumbered § 5693 and amended by Stats.1991, c. 89 (A.B.1288), § 162, eff. June 30, 1991.

§ 5693.2. Advisory group

Counties undertaking development of a community vocational

rehabilitation system are encouraged to establish an advisory group consisting of primary consumers, parents, representatives from the business community, and other individuals who may provide assistance in developing the system.

(Formerly § 5695, added by Stats.1985, c. 1286, § 9, eff. Sept. 30, 1985. Renumbered § 5693.2 and amended by Stats.1992, c. 1374 (A.B.14), § 33, eff. Oct. 28, 1992.)

§ 5693.5. Technical assistance

The director shall provide technical assistance to those counties developing a community vocational rehabilitation system. In the event that the department lacks sufficient resources to provide technical assistance, it may be provided by contract.

(Formerly § 5696, added by Stats.1985, c. 1286, § 9, eff. Sept. 30, 1985. Renumbered § 5693.5 and amended by Stats.1991, c. 89 (A.B.1288), § 163, eff. June 30, 1991.)

Article 4 SELF–HELP

§ 5694. Self–help groups; peer counseling; individualized service plans

Each community support program for the homeless mentally disabled should also assist its clients to establish self–help groups and peer counseling. Each agency should offer each client a written individualized service plan that will specify the services to be provided as a result of discussions with the client and the rights of the client, as well as the expected results or outcomes of the services. Each program should encourage each client to include family members, friends, his or her primary therapist, and his or her physician in the development of his or her individualized service plan.

(Added by Stats.1991, c. 89 (A.B.1288), § 164, eff. June 30, 1991.)

§ 5694.5. Funding of self–help projects

The counties may utilize designated mental health funding pursuant to this part for establishing and maintaining any client self–help mental health projects.

(Added by Stats.1991, c. 89 (A.B.1288), § 164, eff. June 30, 1991.)

Article 5 POLICY INITIATIVES FOR SERIOUSLY EMOTIONALLY DISTURBED CHILDREN

§ 5694.7. Notice of specific case to director; assignment of case for review and assessment to private provider; determination; time

When the director of mental health in a county is notified pursuant to Section 319.1 or 635.1, or Section 7572.5 of the Government Code about a specific case, the county mental health director shall assign the responsibility either directly or through contract with a private provider, to review the information and assess whether or not the child is seriously emotionally disturbed as well as to determine the level of involvement in the case needed to assure access to appropriate mental health treatment services and whether appropriate treatment is available through the minor's own resources, those of the family or another private party, including a third–party payer, or through another agency, and to ensure access to services available within the county's program. This determination shall be submitted in writing to the notifying agency within 30 days. If in the course of evaluating the minor, the county mental health director determines that the minor may be dangerous, the county mental health director may request the court to direct counsel not to reveal information to the minor relating to the name and address of the person who prepared the subject report. If appropriate treatment is not available within the county's Bronzan–McCorquodale program, nothing in this section shall prevent the court from ordering treatment directly or through a family's private resources.

(Formerly § 5697.5, added by Stats.1985, c. 1286, § 10, eff. Sept. 30, 1985. Amended by Stats.1988, c. 1125, § 2. Renumbered § 5694.7 and amended by Stats.1991, c. 89 (A.B.1288), § 168, eff. June 30, 1991; Stats.1991, c. 356 (A.B.910), § 1.)

Article 6 REGIONAL FACILITIES FOR SERIOUSLY EMOTIONALLY DISTURBED WARDS

§ 5695. Legislative findings and declaration

The Legislature finds and declares the following:

(a) The Legislature has declared its intent to provide, at the local level, a range of appropriate mental health services for seriously emotionally disturbed minors. These programs include both outpatient and nonsecure residential care and treatment.

(b) The Legislature recognizes that, while some minors will benefit from this care and treatment, there exists a population within that group who have been adjudged wards of the juvenile court pursuant to Section 602 who are seriously emotionally disturbed, and by lack of behavior control and offense history, are not benefiting from existing programs, including the 24–hour facilities currently being operated under juvenile court law (Chapter 2 (commencing with Section 200) of Part 1 of Division 2).

(c) The Legislature finds that there are no treatment facilities specifically designed and operated to provide both intensive mental health treatment and behavior control to this population of wards in a secure setting. These wards are frequent failures in open residential care and when confined to traditional juvenile justice system facilities, disrupt programming, endanger themselves and others, and require intensive supervision including occasional isolation and provision of a one–to–one supervision ratio. The behavior and needs of this population affect the ability of the existing facilities to meet the program needs of the remainder of the population which is more appropriately detained or committed there.

(d) Psychiatric hospitals frequently refuse to accept these wards because of their offense history or their extremely disruptive behavior, because they do not always meet medical necessity for acute admission, or because the lengths of stay in inpatient programs are too limited in duration. Because of these problems, seriously emotionally disturbed minors adjudged to be wards pursuant to Section 602 do not receive the level of mental health care necessary to interrupt the cycle of emotional disturbance leading to assaultive or self–destructive behavior.

(e) The Legislature therefore declares its intent to establish regional facilities which will provide an additional dispositional resource to the juvenile justice system, and which will demonstrate the feasibility and effectiveness of providing the services described in this chapter to seriously emotionally disturbed minors who have been adjudged wards of the juvenile court pursuant to Section 602 and whose physical and mental treatment needs require a secure facility and program. It is also the intent of the Legislature to secure for the minors committed to such a facility, the protection, custody, care, treatment, and guidance that is consistent with the purpose of the juvenile court law (Chapter 2 (commencing with Section 200) of Part 1 of Division 2).

(Added by Stats.1991, c. 89 (A.B.1288), § 170, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5695.2. Regional facilities; maximum term of commitment

There may be established, on a regional basis, secure facilities which are physically and programmatically designed for the commitment and ongoing treatment of seriously emotionally disturbed minors who have been adjudged wards of the juvenile court pursuant to Section 602. No minor shall be committed to the facility for more than 18 months from the date of admission.

(Added by Stats.1991, c. 89 (A.B.1288), § 170, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5695.5. Board of directors

A board of directors for a facility shall be established to provide oversight and direction to the design, implementation, and operation of the facility in order to ensure adherence to the statement of legislative intent in Section 5590 and to the overall goals and objectives of the facility.

(Added by Stats.1991, c. 89 (A.B.1288), § 170, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5695.7. Composition of board; administration of facility

(a) The board of directors shall be composed of the chief probation officer and the local mental health directors of each of the participating counties.

(b) The regional facilities shall operate under the administration of the onsite director who shall be directly responsible to the board of directors for adherence to all policies and procedures established by the board and to the intent of the Legislature stated in Section 5695.

(Added by Stats.1991, c. 89 (A.B.1288), § 170, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 52, eff. Oct. 7, 1991.)

§ 5696. Admission criteria

Prior to the opening of any regional facility, the board of directors shall develop written admission criteria, approved by the Department of the Youth Authority, for those minors who are most at risk of entering the adult criminal justice system as emotionally disordered offenders at high risk of committing predatory and violent crimes, including, but not limited to, the following requirements:

(a) The minor is at the time of commitment between the ages of 12 and 18 years, he or she has been adjudged to be a ward of the juvenile court pursuant to Section 602, and his or her custody has been placed under the supervision of a probation officer pursuant to Section 727.

(b) The ward is seriously emotionally disturbed as is evidenced by a diagnosis from the current edition of the Diagnostic and Statistical Manual of Mental Disorders and evidences behavior inappropriate to the ward's age according to expected developmental norms. Additionally, all of the following must be present:

(1) The behavior presents a danger to the community or self and requires intensive supervision and treatment, but the ward is not amenable to other private or public residential treatment programs because his or her behavior requires a secure setting.

(2) The symptomology is both severe and frequent.

(3) The inappropriate behavior is persistent.

(Added by Stats.1991, c. 89 (A.B.1288), § 170, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5696.2. Wards not eligible for admission

No ward shall be admitted to any regional facility described in this chapter who meets any of the following criteria:

(a) The ward has a primary substance abuse problem.

(b) The ward has a primary developmental disability.

(c) The ward requires an acute psychiatric hospital setting.

(d) The ward can benefit from or requires a level of treatment or confinement not provided at the facility.

(e) The ward suffers from a medical condition which requires ongoing nursing and medical care, beyond the level that the program can provide.

(f) The ward is under conservatorship established pursuant to Chapter 3 (commencing with Section 5350) of this part.

(Added by Stats.1991, c. 89 (A.B.1288), § 170, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5696.5. Program standards, policies and procedures; required elements

Prior to the opening of a facility, the board of directors shall establish written program standards and policies and procedures, approved by the Department of the Youth Authority that address and include, but are not limited to, the following:

(a) A staffing number and pattern that meets the special behavior, supervision, treatment, health, and educational needs of the population described in this chapter. Staff shall be qualified to provide intensive treatment and services and shall include, at a minimum:

(1) A project or clinical director, a psychiatrist or, psychologist, a social worker, a registered nurse, and a recreation or occupational therapist.

(2) A pediatrician, a dentist, and a licensed marriage and family therapist, on an as–needed basis.

(3) Educational staff in sufficient number and with the qualifications needed to meet the population served.

(4) Child care staff in sufficient numbers and with the qualifications needed to meet the special needs of the population.

(b) Programming to meet the needs of all wards admitted, including, but not limited to, all of the following:

(1) Physical examinations on admission and ongoing health care.

(2) Appropriate and closely monitored use of all behavioral management techniques.

(3) The establishment of written, individual treatment and educational plans and goals for each ward within 10 days of admission and which are updated at least quarterly.

(4) Written discharge planning that addresses each ward's continued treatment, educational, and supervision needs.

(5) Regular, written progress records regarding the care and treatment of each ward.

(6) Regular and structured treatment of all wards, including, but not limited to, individual, group and family therapy, psychological testing, medication, and occupational, or recreational therapy.

(7) Access to neurological testing and laboratory work as needed.

(8) The opportunity for regular family contact and involvement.

(9) A periodic review of the continued need for treatment within the facility.

(10) Educational programming, including special education as needed.

(Added by Stats.1991, c. 89 (A.B.1288), § 170, eff. June 30, 1991. Amended by Stats.2000, c. 140 (A.B.2524), § 1.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5696.7. Admission referrals; screening

Wards shall be referred for admission to the director of a regional facility following screening and approval through a joint mental health and probation screening committee in the county which refers the minor. This screening process shall be defined in the standards, policies, and procedures governing the operation of the facility. The probation officer shall, in consultation and cooperation with the county mental health staff, process the ward's admission to the facility and implement the discharge plan.

(Added by Stats.1991, c. 89 (A.B.1288), § 170, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5697. Public education programs

The regional board of directors shall contract with the county in which the regional facility is located for the provision of a public education program which will meet the educational requirements and needs of the wards admitted to the facility.

(Added by Stats.1991, c. 89 (A.B.1288), § 170, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5697.2. Reports

The board of directors of a regional facility shall submit to the Director of the Youth Authority, a report which includes, at a minimum, a description of the regional facility, the population to be served, criteria for admission and release, program goals and services, staffing, a postrelease component, appropriate educational programming, an annual evaluation component, and a proposed budget.

(Added by Stats.1991, c. 89 (A.B.1288), § 170, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5697.5. Rules and regulations

The Director of the Youth Authority, in conjunction with the Director of Mental Health, shall adopt rules and regulations to establish, monitor, and enforce minimum standards for regional facilities.

(Added by Stats.1991, c. 89 (A.B.1288), § 170, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

Article 7 SYSTEM OF CARE FOR SERIOUSLY EMOTIONALLY DISTURBED CHILDREN AND YOUTH

§ 5698. Legislative intent; principles for system of care

It is the intent of the Legislature to encourage in each county a system of care for seriously emotionally disturbed children and youth. This system of care should be based upon the following principles:

(a) A defined range of interagency services, blended programs and program standards that facilitate appropriate service delivery in the least restrictive environment as close to home as possible. The system should use available and accessible intensive home and school–based alternatives.

(b) A defined mechanism to ensure that services are child centered and family focused with parental participation in all aspects of the planning and delivery of service.

(c) A formalized multiagency policy making council and an interagency case management services council. The roles and responsibilities of these councils should be specified in existing interagency agreements or memoranda of understanding, or both.

(d) A defined interagency case management system designed to facilitate services to the defined target population.

(e) A defined mechanism to ensure that services are culturally competent.

(Added by Stats.1991, c. 89 (A.B.1288), § 171, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

Chapter 2.7 CASE MANAGEMENT FOR CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCE

§ 5699. Legislative findings and declaration

(a) The Legislature finds and declares all of the following:

(1) That mental health case management services required for children with serious emotional disturbance are different than these services for mentally disordered clients described in Chapter 2.5 (commencing with Section 5670).

(2) That mental health case management services for children with serious emotional disturbance are not defined in statute.

(3) That the development of mental health case management for these children would assure comprehensive appraisal and utilization of the most appropriate resources within the children's environment as well as the maintenance and strengthening of family ties.

(b) It is the intent of the Legislature to encourage the development of mental health case management services for children with serious emotional disturbance who are separated or at risk of being separated from their families and require mental health treatment, to the extent resources are available. It is further the intent of the Legislature that mental health case management for children with serious emotional disturbance in this state be developed in accordance with the definitions and guidelines contained in this chapter.

(Formerly § 5678, added by Stats.1986, c. 806, § 1. Renumbered § 5692 and amended by Stats.1991, c. 89 (A.B.1288), § 136, eff. June 30, 1991. Renumbered § 5699 and amended by Stats.1991, c. 611 (A.B.1491), § 50, eff. Oct. 7, 1991.)

§ 5699.1. Definitions; construction of chapter

Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

(Formerly § 5678.1, added by Stats.1986, c. 806, § 1. Renumbered § 5692.5 and amended by Stats.1991, c. 89 (A.B.1288), § 137, eff. June 30, 1991. Renumbered § 5699.1 and amended by Stats.1991, c. 611 (A.B.1491), § 51, eff. Oct. 7, 1991.)

§ 5699.2. Seriously emotionally disturbed children; case management services

Children identified for case management services under this section shall be minors under 18 years of age described in Section 5600.3 as seriously emotionally disturbed, and who also meet one or more of the following criteria:

(a) A child who is a ward or dependent of the juvenile court pursuant to Section 300, 601, or 602 and is placed out–of–home.

(b) A child who is a special education student defined in paragraph 8 of subdivision (b) of Section 300.5 of Title 34 of the Code of Federal Regulations and is receiving residential care pursuant to an individual educational program. This section also includes special education students through age 21 identified in paragraph (4) of subdivision (c) of Section 56026 of the Education Code.

(c) An inpatient in a psychiatric hospital, psychiatric health facility, or residential treatment facility receiving services either on a voluntary or involuntary basis.

(d) An outpatient receiving intensive non–24–hour mental health treatment, such as day treatment or crisis services who is "at risk" of psychiatric hospitalization or out–of–home placement for residential treatment.

(Formerly § 5678.2, added by Stats.1986, c. 806, § 1. Renumbered § 5699 and amended by Stats.1991, c. 89 (A.B.1288), § 138, eff. June 30, 1991. Renumbered § 5699.2 and amended by Stats.1991, c. 611 (A.B.1491), § 53, eff. Oct. 7, 1991. Amended by Stats.1992, c. 1374 (A.B.14), § 34, eff. Oct. 28, 1992.)

§ 5699.3. Individual treatment plan

"Individual treatment plan" means a plan that includes all of the following:

(a) An assessment of the minor's specific capabilities and problems.

(b) A statement of specific, time–limited objectives for improving the capabilities and resolving the problems. The objectives shall be stated in measurable terms which allow measurement of progress.

(c) A schedule of the type and amount of services to achieve treatment plan objectives, including identification of the provider or providers of service responsible for attaining each objective.

(d) A schedule of regular periodic review and reassessment to ascertain that planned services have been provided and that objectives have been reached within the times specified.

(Formerly § 5678.3, added by Stats.1986, c. 806, § 1. Renumbered § 5699.1 and amended by Stats.1991, c. 89 (A.B.1288), § 139, eff. June 30, 1991. Renumbered § 5699.3 and amended by Stats.1991, c. 611 (A.B.1491), § 54, eff. Oct. 7, 1991.)

§ 5699.4. Case management services

On and after January 1, 1987, any county may provide case management services for children with serious emotional disturbance pursuant to this chapter. The case management services may include all of the following:

(a) Development of an individual treatment plan for each child. The plan shall be collaboratively prepared and reviewed and modified, if necessary, at least annually, by one representative of the mental health program, the parents, legal guardian, conservator, or court appointed social worker or probation officer, and, where appropriate, the minor.

(b) Assignment of a mental health case manager to each child. The duties of the mental health case manager may include, but not be limited to, all of the following:

(1) Coordinating an ecological assessment of the child's needs which evaluates the child both individually and in relation to his or her family, school, and community environments.

(2) Developing, implementing, monitoring, and reviewing each individual treatment plan that addresses the identified needs.

(3) Linking and arranging or providing for the needed services.

(4) Monitoring the adequacy of the services provided.

(5) Advocating for the minor.

(Formerly § 5678.5, added by Stats.1986, c. 806, § 1. Renumbered § 5699.2 and amended by Stats.1991, c. 89 (A.B.1288), § 140, eff. June 30, 1991. Renumbered § 5699.4 and amended by Stats.1991, c. 611 (A.B.1491), § 55, eff. Oct. 7, 1991.)

§ 5699.5. Use of state funds

Nothing in this chapter shall be construed to authorize the use of state funds to provide services under this chapter or to enforce the provisions of this chapter.

(Formerly § 5678.6, added by Stats.1986, c. 806, § 1. Renumbered § 5699.5 and amended by Stats.1991, c. 89 (A.B.1288), § 141, eff. June 30, 1991.)

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

Chapter 3 FINANCIAL PROVISIONS

CONTINGENCY

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see Historical and Statutory Notes under Welfare and Institutions Code § 5600.

§ 5700. Legislative findings; funding sources for mental health services

(a) The Legislature recognizes that mental health services provided by county mental health programs are funded from the following general categories or sources of public funding:

(1) Funds received by counties from the Local Revenue Fund and county funds necessary to meet the federal maintenance of effort requirements.

(2) Funds from appropriations made to the department or for which the department is responsible for administering, which are designated for local mental health services.

(3) Reimbursements through the Medi–Cal program for mental health services to Medi–Cal eligible individuals receiving mental health services from county mental health programs.

(4) Funds from county or local appropriations which are designated for local mental health services.

(b) The Legislature further recognizes that there are procedures and requirements which are unique to each category set forth in subdivision (a), as well as procedures and requirements which apply to all four categories.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991.)

§ 5701. Equity of funding; requirements; exemptions; allocations

(a) To achieve equity of funding, available funding for local mental health programs beyond the funding provided pursuant to Section 17601 shall be distributed to cities, counties, and cities and counties pursuant to the procedures described in subdivision (c) of Section 17606.05.

(b) Funding provided pursuant to Section 6 of Article XIIIB of the California Constitution, funding provided pursuant to subdivision (c), and funding provided for future pilot projects shall be exempt from the requirements of subdivision (a).

(c) Effective in the 1994–95 fiscal year and each year thereafter:

(1) The State Department of Mental Health shall annually identify from mental health block grant funds provided by the federal government, the maximum amount that federal law and regulation permit to be allocated to counties and cities and counties pursuant to this subdivision. This section shall apply to any federal mental health block grant funds in excess of the following:

(A) The amount allocated to counties and cities and counties from the alcohol, drug abuse, and mental health block grant in the 1991–92 fiscal year.

(B) Funds for departmental support.

(C) Amounts awarded to counties and cities and counties for children's systems of care programs pursuant to Part 4 (commencing with Section 5850).

(D) Amounts allocated to small counties for the development of alternatives to state hospitalization in the 1993–94 fiscal year.

(E) Amounts appropriated by the Legislature for the purposes of this part.

(2) Notwithstanding subdivision (a), annually the State Department of Mental Health shall allocate to counties and cities and counties the funds identified in paragraph (1), not to exceed forty million dollars ($40,000,000) in any year. The allocations shall be proportional to each county's and each city and county's percentage of the forty million dollars ($40,000,000) in Cigarette and Tobacco Products Surtax funds that were allocated to local mental health programs in the 1991–92 fiscal year.

(3) Monthly, the Controller shall allocate funds from the Vehicle License Collection Account of the Local Revenue Fund to counties and cities and counties for mental health services. Allocations shall be made to each county or city and county in the same percentages as described in paragraph (2), until the total of the funds allocated to all counties in each year pursuant to paragraph (2) and this paragraph reaches forty million dollars ($40,000,000).

(4) Funds allocated to counties and cities and counties pursuant to paragraphs (2) and (3) shall not be subject to Section 17606.05.

(5) Funds that are available for allocation in any year in excess of the forty million dollar ($40,000,000) limits described in paragraph (2) or (3) shall be deposited into the Mental Health Subaccount of the Local Revenue Fund.

(6) Nothing in this section is intended to, nor shall it, change the base allocation of any city, county, or city and county as provided in Section 17601.

(Added by Stats.1993, c. 100 (S.B.463), § 5, eff. July 13, 1993. Amended by Stats.1994, c. 1096 (S.B.1795), § 1, eff. Sept. 29, 1994.)

§ 5701.1. Use of funds for development of innovative programs

Notwithstanding Section 5701, the State Department of Mental Health, in consultation with the California Mental Health Directors Association, may utilize funding from the Substance Abuse and Mental Health Services Administration Block Grant, awarded to the State Department of Mental Health, above the funding level provided in federal fiscal year 1998, for the development of innovative programs for identified target populations, upon appropriation by the Legislature.

(Added by Stats.1999, c. 146 (A.B.1107), § 28, eff. July 22, 1999.)

§ 5701.2. Transfer of funds or state hospital beds; allocation of state mental health moneys; records

(a) The department shall maintain records of any transfer of funds or state hospital beds made pursuant to Chapter 1341 of the Statutes of 1991.

(b) Commencing with the 1991–92 fiscal year, the department shall maintain records that set forth that portion of each county's allocation of state mental health moneys that represent the dollar equivalent attributed to each county's state hospital beds or bed days, or both, that were allocated as of May 1, 1991. The department shall provide a written summary of these records to the appropriate committees of the Legislature and the California Mental Health Directors Association within 30 days after the enactment of the annual Budget Act.

(c) Nothing in this section is intended to change the counties' base allocations as provided in subdivisions (a) and (b) of Section 17601.

(Added by Stats.1993, c. 100 (S.B.463), § 6, eff. July 13, 1993.)

§ 5701.3. Psychotherapy and other mental health services; funding responsibilities

Consistent with the annual Budget Act, this chapter shall not affect the responsibility of the state to fund psychotherapy and other mental health services required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and the state shall reimburse counties for all allowable costs incurred by counties in providing services pursuant to that chapter. The reimbursement provided pursuant to this section for purposes of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code shall be provided by the state through an appropriation included in either the annual Budget Act or other statute. Counties shall continue to receive reimbursement from specifically appropriated funds for costs necessarily incurred in providing psychotherapy and other mental health services in accordance with this chapter. For reimbursement claims for services delivered in the 2001–02 fiscal year and thereafter, counties are not required to provide any share of those costs or to fund the cost of any part of these services with money received from the Local Revenue Fund established by Chapter 6 (commencing with Section 17600) of Part 5 of Division 9.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991. Amended by Stats.2002, c. 1167 (A.B.2781), § 38, eff. Sept. 30, 2002.)

§ 5701.4. Reimbursement of costs

Costs that were reimbursed, prior to July 1, 1991, from the local assistance appropriation contained in Item 4440–101–001 of the annual Budget Act, shall be reimbursed from funds received by counties pursuant to this chapter.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991.)

§ 5701.5. Funding of city–operated programs

City–operated Bronzan–McCorquodale programs paid by the state under Section 5615 shall be directly funded in accordance with this chapter.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991.)

§ 5701.6. Funding of county programs

(a) Counties may utilize money received from the Local Revenue Fund established by Chapter 6 (commencing with Section 17600) of Part 5 of Division 9 to fund the costs of any part of those services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. If money from the Local Revenue Fund is used by counties for those services, counties are eligible for reimbursement from the state for all allowable costs to fund assessments, psychotherapy, and other mental health services allowable pursuant to Section 300.24 of Title 34 of the Code of Federal Regulations and required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(b) This section is declaratory of existing law.

(Added by Stats.2004, c. 493 (S.B.1895), § 6, eff. Sept. 13, 2004.)

§ 5702. Maintenance of effort; definition

For the purposes of this part, the definition of maintenance of effort contained in Section 17608.05 shall apply.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991.)

§ 5703. Additional appropriations

Nothing in this chapter shall prevent a county, or counties acting jointly, from appropriating additional funds for mental health services. In no event shall counties be required to appropriate more than the amount required under the provisions of this chapter.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991.)

§ 5704. Deposit of funds; dedicated purposes

Funds described in paragraphs (1) and (2) of subdivision (a) of Section 5700 shall be deposited in the mental health account of the local health and welfare trust fund and shall only be used to fund expenditures for the costs of mental health services as delineated in regulations promulgated by the department, and shall not be used to fund expenditures for costs excluded by Section 5714 or for costs specifically excluded from funding from this source by any other provision of law.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 58, eff. Oct. 7, 1991.)

§ 5704.5. Children's services; special consideration

(a) It is the intent of the Legislature that special consideration be given to children's services in funding county services to expand existing programs or to establish new programs.

(b) A county may not decrease the proportion of its funding expended for children's services below the proportion expended in the 1983–84 fiscal year unless a determination has been made by the governing body in a noticed public hearing that the need for new or expanded services to persons under age 18 has significantly decreased.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991.)

§ 5704.6. Allocation of funds for new or expanded programs; services to persons under 18

(a) Except as provided in subdivision (c), each county shall allocate for services to persons under age 18, 50 percent of the amount of any funding augmentation received for new or expanded mental health programs until the amount expended for mental health services to

persons under age 18 equals not less than 25 percent of the county's gross budget for mental health or not less than the percentage of persons under age 18 in the total population of the county, whichever percentage is less. Once achieved, this minimum ratio shall be maintained continuously thereafter.

(b) As used in this section, the term "new or expanded mental health programs" does not include any programs which are required by statute, or programs which provide alternatives to hospitalization for patients of state hospitals.

(c) From each funding augmentation for new or expanded mental health programs, a county may allocate to persons under age 18 an amount less than the percentage required in subdivision (a) when a determination has been made by the governing body in a noticed public hearing that the need for new or expanded services to persons under age 18 does not exist or is less than the need for services to one or more specified groups of adults.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991.)

§ 5705. Negotiated net amounts or rates; use as cost of services; conditions

(a) It is the intent of the Legislature that the use of negotiated net amounts or rates, as provided in this section, be given preference in contracts for services under this division.

(b) Negotiated net amount or rates may be used as the cost of services in contracts between the state and the county or contracts between the county and a subprovider of services, or both, in accordance with the following provisions:

(1) A negotiated net amount shall be determined by calculating the total budget for services for a program or a component of a program, less the amount of projected revenue. All participating government funding sources, except for the Medi–Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9), shall be bound to that amount as the cost of providing all or part of the total county mental health program as described in the county performance contract for each fiscal year, to the extent that the governmental funding source participates in funding the county mental health programs. Where the State Department of Health Services promulgates regulations for determining reimbursement of Short–Doyle mental health services allowable under the Medi–Cal program, those regulations shall be controlling as to the rates for reimbursement of Short–Doyle mental health services allowable under the Medi–Cal program and rendered to Medi–Cal beneficiaries. Providers under this subdivision shall report to the State Department of Mental Health and local mental health programs any information required by the State Department of Mental Health in accordance with procedures established by the Director of Mental Health.

(2) A negotiated rate is the payment for services delivered on a per unit of service basis. All participating governmental funding sources shall be bound by that amount as the cost of providing that service for that county mental health program to the extent that the governmental funding source participates in funding the county and mental health program. Where the State Department of Health Services promulgates regulations for determining reimbursement of Short–Doyle mental health services allowable under the Medi–Cal program, those regulations shall be controlling as to the rates for reimbursement of Short–Doyle mental health services allowable under the Medi–Cal program and rendered to Medi–Cal beneficiaries. Providers under this subdivision shall report to the local mental health program and the local mental health program shall report to the State Department of Mental Health any information required by the department in accordance with procedures established by the Director of Mental Health.

(3) A county choosing to participate in the negotiated rate setting process for community mental health services under the Medi–Cal program in any fiscal year shall submit a negotiated rate proposal to the State Department of Mental Health, along with the prior fiscal year cost report, by December 31 following the close of the fiscal year. The department shall respond with comments to the negotiated rate proposal of a participating county by January 31 following the submission of the prior year cost report.

(4) Failure to submit both the rate proposal, as required by paragraph (3), and the prior fiscal year cost report by December 31, as required by subdivision (c) of Section 5718, shall result in disapproval of the rate proposal, and consequent settlement of the current year cost report to actual cost.

(c) Notwithstanding any other provision of this division or Division 9 (commencing with Section 10000), absent a finding of fraud, abuse, or failure to achieve contract objectives, no restrictions, other than any contained in the contract, shall be placed upon a provider's expenditure or retention of funds received pursuant to this section.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 59, eff. Oct. 7, 1991; Stats.1996, c. 515 (A.B.2801), § 1, eff. Sept. 16, 1996.)

§ 5706. Performance contracts; exemption from public contract provisions

Notwithstanding any other provision of law, the portions of the county mental health services performance contract which become a contractual arrangement between the county and the department shall be exempt from the requirements contained in the Public Contract Code and the State Administrative Manual, and shall be exempt from approval by the Department of General Services.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991.)

§ 5707. Expenditure of funds designated for local mental health services

Funds appropriated to the department which are designated for local mental health services and funds which the department is responsible for allocating or administering, including, but not limited to, federal block grants funds, shall be expended in accordance with this section and Sections 5708 to 5717, inclusive, except when there are conflicting federal requirements, in which case the federal requirements shall be controlling.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991.)

§ 5708. Funding during transitional period

(a) To maintain stability during the transition, counties that contracted with the department during the 1990–91 fiscal year on a negotiated net amount basis may continue to use the same funding mechanism.

(b) For those counties that contracted with the department pursuant to subdivision (a) with respect to the 1990–91 fiscal year, the negotiated rate mechanism for Short–Doyle Medi–Cal services for those counties shall be continued until a new ratesetting methodology is developed pursuant to Section 5724.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991. Amended by Stats.1992, c. 1374 (A.B.14), § 35, eff. Oct. 28, 1992.)

§ 5709. Fees for services

Regardless of the funding source involved, fees shall be charged in accordance with the ability to pay for mental health services rendered but not in excess of actual costs in accordance with Section 5720.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991.)

§ 5710. Charges for patient care; persons liable for charges; fee schedule

(a) Charges for the care and treatment of each patient receiving service from a county mental health program shall not exceed the actual or negotiated cost thereof as determined or approved by the Director of Mental Health in accordance with standard accounting practices. The director may include the amount of expenditures for capital outlay or the interest thereon, or both, in his or her determination of actual cost. The responsibility of a patient, his or her estate, or his or her responsible relatives to pay the charges and the powers of the director with respect thereto shall be determined in accordance with Article 4 (commencing with Section 7275) of Chapter 3 of Division 7.

(b) The Director of Mental Health may delegate to each county all or part of the responsibility for determining the financial liability of patients to whom services are rendered by a county mental health program and all or part of the responsibility for determining the ability of the responsible parties to pay for services to minor children who are referred by a county for treatment in a state hospital. Liability shall extend to the estates of patients and to responsible relatives, including the spouse of an adult patient and the parents of minor children. The Director of Mental Health may also delegate all or part of the responsibility for collecting the charges for patient fees. Counties may decline this responsibility as it pertains to state hospitals, at their discretion. If this responsibility is delegated by the director, the director shall establish and maintain the policies and procedures for making the determinations and collections. Each county to which the responsibility is delegated shall comply with the policy and procedures.

(c) The director shall prepare and adopt a uniform sliding scale patient fee schedule to be used in all mental health agencies for services rendered to each patient. In preparing the uniform patient fee schedule, the director shall take into account the existing charges for state hospital services and those for community mental health program services. If the director determines that it is not practicable to devise a single uniform patient fee schedule applicable to both state hospital services and services of other mental health agencies, the director may adopt a separate fee schedule for the state hospital services which differs from the uniform patient fee schedule applicable to other mental health agencies.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991. Amended by Stats.1995, c. 712 (S.B.227), § 3.)

§ 5711. Federal audit exceptions; offset of county allocation

(a) In the case of federal audit exceptions, federal audit appeal processes shall be followed unless the State Department of Mental Health, in consultation with the California Conference of Local Mental Health Directors, determines that those appeals are not cost beneficial.

(b) Whenever there is a final federal audit exception against the state resulting from expenditure of federal funds by individual counties, the State Department of Mental Health or the State Department of Health Services may request the Controller's office to offset the county's allocation from the Mental Health Subaccount of the Sales Tax Account of the Local Revenue Fund by the amount of the exception. The Controller shall be provided evidence that the county has been notified of the amount of the audit exception no less than 30 days before the offset is to occur. The State Department of Mental Health and the State Department of Health Services shall involve the appropriate counties in developing responses to any draft federal audit reports which may directly impact the counties.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 60, eff. Oct. 7, 1991.)

§ 5712. Cost of services; allocation between state and county funds

The department shall contract with counties for the funds appropriated to, and allocated by, the department pursuant to paragraph (2) of subdivision (a) of Section 5700 in accordance with the following:

(a) The net cost of all services specified in the contract between the counties and the department shall be financed on a basis of 90 percent state funds and 10 percent county funds except for services to be financed from other public or private sources as indicated in the contracts.

(b) The cost requirement for local financial participation pursuant to this section shall be waived for all counties with a population of 125,000 or less based on the most recent available estimates of population data as determined by the Population Research Unit of the Department of Finance.

(c) The cost requirements for local financial participation pursuant to this section shall be waived for funds provided pursuant to Part 2.5 (commencing with Section 5775).

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 61, eff. Oct. 7, 1991; Stats.1997, c. 484 (S.B.651), § 2, eff. Sept. 25, 1997.)

§ 5713. Advances for funding of services; payment method

Advances for funding mental health services may be made by the Director of Mental Health from funds appropriated to the department for local mental programs and services specified in the annual Budget Act. Any advances made pursuant to this section shall be made in the form and manner the Director of Mental Health shall determine. When certified by the Director of Mental Health, advances shall be presented to the Controller for payment. Each advance shall be payable from the appropriation made for the fiscal year in which the expenses upon which the advance is based are incurred. The advance may be paid monthly in 12 equal increments but the total amount advanced in one fiscal year shall not exceed 95 percent of the county's total allocation for that year.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991.)

§ 5714. Legal proceedings involving mentally disordered persons; payment of costs

To continue county expenditures for legal proceedings involving mentally disordered persons, the following costs incurred in carrying out Part 1 (commencing with Section 5000) of this division shall not be paid for from funds designated for mental health services.

(a) The costs involved in bringing a person in for 72–hour treatment and evaluation.

(b) The costs of court proceedings for court–ordered evaluation, including the service of the court order and the apprehension of the person ordered to evaluation when necessary.

(c) The costs of court proceedings in cases of appeal from 14–day intensive treatment.

(d) The cost of legal proceedings in conservatorship other than the costs of conservatorship investigation as defined by regulations of the State Department of Mental Health.

(e) The court costs in postcertification proceedings.

(f) The cost of providing a public defender or other court–appointed attorneys in proceedings for those unable to pay.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 62, eff. Oct. 7, 1991.)

§ 5715. Unexpended funds; retention by county

Subject to the approval of the department, at the end of the fiscal year, a county may retain unexpended funds allocated to it by the department from funds appropriated to the department, with the exception of block grant funds, exclusive of the amount required to pay for the care of patients in state hospitals, for 12 months for expenditure for mental health services in accordance with this part.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991.)

§ 5716. Contracts with providers; negotiated rates; reimbursements

Counties may contract with providers on a negotiated rate or negotiated net amount basis in the same manner as set forth in Section 5705, except that negotiated rates for Short–Doyle Medi–Cal services shall be approved by the department. If a negotiated rate for Short–Doyle Medi–Cal services is not approved by the department, reimbursement to the county shall be in accordance with applicable provisions of this chapter and department regulation and shall be based upon actual cost.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 63, eff. Oct. 7, 1991; Stats.1992, c. 1374 (A.B.14), § 36, eff. Oct. 28, 1992.)

§ 5717. Expenditures eligible for funding; audits; repayments

(a) Expenditures that may be funded from amounts allocated to the county by the department from funds appropriated to the department

shall include negotiated rates and net amounts; salaries of personnel; approved facilities and services provided through contract; operation, maintenance and service costs including insurance costs or departmental charges for participation in a county self–insurance program if the charges are not in excess of comparable available commercial insurance premiums and on the condition that any surplus reserves be used to reduce future year contributions; depreciation of county facilities as established in the state's uniform accounting manual, disregarding depreciation on the facility to the extent it was financed by state funds under this part; lease of facilities where there is no intention to, nor option to, purchase; expenses incurred under this act by members of the California Conference of Local Mental Health Directors for attendance at regular meetings of these conferences; expenses incurred by either the chairperson or elected representative of the local mental health advisory boards for attendance at regular meetings of the Organization of Mental Health Advisory Boards; expenditures included in approved countywide cost allocation plans submitted in accordance with the Controller's guidelines, including, but not limited to, adjustments of prior year estimated general county overhead to actual costs, but excluding allowable costs otherwise compensated by state funding; net costs of conservatorship investigation, approved by the Director of Mental Health. Except for expenditures made pursuant to Article 6 (commencing with Section 129225) of Chapter 1 of Part 6 of Division 107 of the Health and Safety Code, it shall not include expenditures for initial capital improvements; the purchaser or construction of buildings except for equipment items and remodeling expense as may be provided for in regulations of the State Department of Mental Health; compensation to members of a local mental health advisory board, except actual and necessary expenses incurred in the performance of official duties that may include travel, lodging, and meals while on official business; or expenditures for a purpose for which state reimbursement is claimed under any other provision of law.

(b) The director may make investigations and audits of expenditures the director may deem necessary.

(c) With respect to funds allocated to a county by the department from funds appropriated to the department, the county shall repay to the state amounts found not to have been expended in accordance with the requirements set forth in this part. Repayment shall be within 30 days after it is determined that an expenditure has been made that is not in accordance with the requirements. In the event that repayment is not made in a timely manner, the department shall offset any amount improperly expended against the amount of any current or future advance payment or cost report settlement from the state for mental health services. Repayment provisions shall not apply to Short–Doyle funds allocated by the department for fiscal years up to and including the 1990–91 fiscal year.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991. Amended by Stats.1992, c. 1374 (A.B.14), § 37, eff. Oct. 28, 1992; Stats.1996, c. 1023 (S.B.1497), § 465, eff. Sept. 29, 1996.)

§ 5718. Services to persons eligible for Medi–Cal

(a)(1) This section and Sections 5719 to 5724, inclusive, shall apply to mental health services provided by counties to Medi–Cal eligible individuals. Counties shall provide services to Medi–Cal beneficiaries and seek the maximum federal reimbursement possible for services rendered to the mentally ill.

(2) To the extent permitted under federal law, funds deposited into the local health and welfare trust fund from the Sales Tax Account of the Local Revenue Fund may be used to match federal medicaid funds in order to achieve the maximum federal reimbursement possible for services pursuant to this chapter. If a county applies to use local funds, the department may enforce any additional federal requirements that use may involve, based on standards and guidelines designed to enhance, protect, and maximize the claiming of those resources.

(3) The standards and guidelines for the administration of mental health services to Medi–Cal eligible persons shall be based on federal medicaid requirements.

(b) With regard to each person receiving mental health services from a county mental health program, the county shall determine whether the person is Medi–Cal eligible and, if determined to be Medi–Cal eligible, the person shall be referred when appropriate to a facility, clinic, or program which is certified for Medi–Cal reimbursement.

(c) With regard to county operated facilities, clinics, or programs for which claims are submitted to the department for Medi–Cal reimbursement for mental health services to Medi–Cal eligible individuals, the county shall ensure that all requirements necessary for Medi–Cal reimbursement for these services are complied with, including, but not limited to, utilization review and the submission of year–end cost reports by December 31 following the close of the fiscal year.

(d) Counties shall certify to the state that required matching funds are available prior to the reimbursement of federal funds.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991. Amended by Stats.1996, c. 515 (A.B.2801), § 2, eff. Sept. 16, 1996.)

§ 5719. Admission to facility; certification of eligibility for assistance

Each public or private facility or agency providing local mental health services pursuant to a county performance contract plan shall make a written certification within 30 days after a patient is admitted to the facility as a patient or first given services by such a facility or agency, to the local mental health director of the county, stating whether or not each of these patients is presumed to be eligible for mental health services under the California Medical Assistance Program.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991.)

§ 5719.5. Capitated, integrated service system of Medi–Cal mental health managed care; field tests

(a) Notwithstanding any other provision of state law, and to the extent permitted by federal law, the State Department of Mental Health may, in consultation with the State Department of Health Services, field test major components of a capitated, integrated service system of Medi–Cal mental health managed care in not less than two, and not more than five participating counties.

(b) County participation in the field test shall be at the counties' option.

(c) Counties eligible to participate in the field test described in subdivision (a) shall include either of the following:

(1) Any county with an existing county organized health system.

(2) Any county that has been designated for the development of a new county organized health system.

(d) The State Department of Mental Health, in consultation with the State Department of Health Services, the counties selected for field testing, and groups representing mental health clients, their families and advocates, county mental health directors, and public and private mental health professionals and providers, shall develop, for the purpose of the field test, major components for an integrated, capitated service system of Medi–Cal mental health managed care, including, but not limited to, all of the following:

(1)(A) A definition of medical necessity.

(B) The preliminary definition developed pursuant to this paragraph shall be submitted to the Legislature no later than February 1, 1994.

(2) Protocols for facilitating access and coordination of mental health, physical health, educational, vocational, and other supportive services for persons receiving services through the field test.

(3) Procedures for promoting quality assurance, performance monitoring measures and outcome evaluation, including measures of client satisfaction, and procedures for addressing beneficiary grievances concerning service denials, changes, or terminations.

(e) Counties participating in the field test shall report to the State Department of Mental Health as the department deems necessary.

(f) Counties participating in the field test shall do both of the following:

(1)(A) Explore, in consultation with the State Department of Mental Health, the State Department of Health Services, and the California Mental Health Directors Association, rates for capitated, integrated Medi–Cal mental health managed care systems, using an actuarially sound ratesetting methodology.

(B) These rates shall be evaluated by the State Department of Mental Health and the State Department of Health Services to determine their fiscal impact, and shall result in no increase in cost to the General Fund, compared with the cost that would occur under the existing organization of Medi–Cal funded mental health services, except for caseload growth and price increases as included in the Medi–Cal estimates prepared by the State Department of Health Services and approved by the Department of Finance. In evaluating the fiscal impact of these rates, the departments shall take into account any shift in clients between Medi–Cal programs in which the nonfederal match is funded by state funds and those in which the match is funded by local funds.

(2) Demonstrate the appropriate fiscal relationship between county organized health systems for the federal medicaid program and integrated, capitated Medi–Cal mental health managed care programs.

(Added by Stats.1993, c. 640 (S.B.369), § 3. Amended by Stats.2004, c. 193 (S.B.111), § 224.)

§ 5720. Reimbursement for services; eligible Medi–Cal persons; negotiated rate agreements

(a) Notwithstanding any other provision of law, the director, in the 1993–94 fiscal year and fiscal years thereafter, subject to the approval of the Director of Health Services, shall establish the amount of reimbursement for services provided by county mental health programs to Medi–Cal eligible individuals.

(b) Notwithstanding this section, in the event that a health facility has entered into a negotiated rate agreement pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 4 of Division 9, the facility's rates shall be governed by that agreement.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991. Amended by Stats.1993, c. 788 (A.B.218), § 6, eff. Oct. 4, 1993.)

§ 5721. Fees paid by private resources; retention of unanticipated funds

Except as otherwise provided in this section, in determining the amounts which may be paid, fees paid by persons receiving services or fees paid on behalf of persons receiving services by the federal government, by the California Medical Assistance Program set forth in Chapter 7 (commencing with Section 14000) of Part 3 of Division 9, and by other public or private sources, shall be deducted from the costs of providing services. However, a county may negotiate a contract which permits a mental health care provider to retain unanticipated funds above the budgeted contract amount, provided that the unanticipated revenues are utilized for the mental health services specified in the contract. If a provider is permitted by contract to retain unanticipated revenues above the budgeted amount, the mental health provider shall specify the services funded by those revenues in the year end cost report submitted to the county. A county shall not permit the retention of any fees paid by private resources on behalf of Medi–Cal beneficiaries without having those fees deducted from the costs of providing services. Whenever feasible, mentally disordered persons who are eligible for mental health services under the California Medical Assistance Program shall be treated in a facility approved for reimbursement in that program. General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be considered as "fees paid by persons" or "fees paid on behalf of persons receiving services" under this section and the contributions shall not be applied in determining the amounts to be paid. These unrestricted contributions shall not be used in part or in whole to defray the costs or the allocated costs of the California Medical Assistance Program.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 64, eff. Oct. 7, 1991.)

§ 5722. Investigations and audits of claims

(a) The department shall have responsibility, as delegated by the State Department of Health Services, for conducting investigations and audits of claims and reimbursements for expenditures for mental health services provided by county mental health programs to Medi–Cal eligible individuals.

(b) The amount of the payment or repayment of federal funds in accordance with audit findings pertaining to Short–Doyle Medi–Cal mental health services shall be determined by the State Director of Health Services pursuant to the existing administrative appeals process of the State Department of Health Services.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 65, eff. Oct. 7, 1991.)

§ 5723. License requirements for reimbursement

The provisions of subdivision (a) of Section 14000 shall not be construed to prevent providers of mental health services pursuant to this part from also being providers of medical assistance mental health services for the purposes of Chapter 7 (commencing with Section 14000) of Part 3 of Division 9. Clinics providing mental health services pursuant to this part shall not be required to be licensed as a condition to reimbursement for providing such medical assistance mental health services.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991.)

§ 5723.5. Back claims; federal reimbursement

Nothwithstanding[1] any other provision of state law, and to the extent permitted by federal law and consistent with federal regulations governing these claims, the state may seek federal reimbursement for back claims under the Short–Doyle Medi–Cal program.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991.)

[1]So in chaptered copy.

§ 5724. Ratesetting system; development; implementation

(a) The department and the State Department of Health Services shall jointly develop a new ratesetting methodology for use in the Short–Doyle Medi–Cal system that maximizes federal funding and utilizes, as much as practicable, federal medicare reimbursement principles. The departments shall work with the counties and the federal Health Care Financing Administration in the development of the methodology required by this section.

(b) Rates developed through the methodology required by this section shall apply only to reimbursement for direct client services.

(c) Administrative costs shall be claimed separately and shall be limited to 15 percent of the total cost of direct client services.

(d) The cost of performing utilization reviews shall be claimed separately and shall not be included in administrative cost.

(e) The ratesetting methodology established pursuant to this section shall contain incentives relating to economy and efficiency in service delivery.

(f) The rates established for direct client services pursuant to this section shall be based on increments of time for all noninpatient services.

(g) The ratesetting methodology shall not be implemented until it has received any necessary federal approvals.

(Added by Stats.1991, c. 89 (A.B.1288), § 174, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 66, eff. Oct. 7, 1991; Stats.1993, c. 788 (A.B.218), § 7, eff. Oct. 4, 1993.)

Chapter 3.5 MENTAL HEALTH MASTER PLAN DEVELOPMENT ACT

§ 5730. Short title

This act is to be known as the Mental Health Master Plan Development Act.
(Added by Stats.1989, c. 1313, § 1.)

§ 5731. Legislative findings

The Legislature finds and declares that the mental health system is a large and important segment of California's system of health care. The Legislature further finds and declares all of the following:

(a) Public Law 99–660 requires that the State Department of Mental Health develop a state plan for the Short–Doyle mental health system which includes all of the following:

(1) Plans developed in response to federal planning requirements shall be submitted to the Legislature.

(2) Evidence of broad participation from concerned citizens and mental health consumers.

(3) An analysis of the needs of seriously and persistently mentally ill adults, severely emotionally disturbed children and homeless mentally ill in California.

(4) Improvements in the mental health delivery system are needed for seriously mentally ill adults, severely emotionally disabled children, and homeless mentally ill.

(5) Given the existing mental health funding base, priorities need to be established for the Short–Doyle community mental health system.

(6) There is no minimum range of treatment services which should be available in every county in California.

(7) Most funding formulas for state mental health programs are not client based.

(8) The state has a special responsibility for the care and treatment of seriously and persistently mentally ill adults, seriously emotionally disturbed minors, and homeless mentally ill who are the most vulnerable and who require consistent supportive services to meet their health and safety needs in the community.

(9) Legislative action is required to ensure that a comprehensive policy is developed which addresses the critical problems and key issues currently facing the mental health system in California.
(Added by Stats.1989, c. 1313, § 1.)

§ 5732. Development and implementation of master plan; California planning council; duties; membership; time for completion

(a) Given the requirements of Public Law 99–660 and the significant policy issues currently facing the mental health system in California, a master plan for mental health is required which integrates these planning and reform efforts and which establishes priorities for the service delivery system and analyzes critical policy issues.

(b) The California Planning Council's scope shall be expanded to include the development of the Mental Health Master Plan. This Mental Health Master Plan shall be distinct but compatible with the plan mandated by Public Law 99–660, the development and implementation of which is the responsibility of the State Department of Mental Health.

(c) Therefore, the California Planning Council required by Public Law 99–660 shall be expanded to include the following members:

(1) The Speaker of the Assembly shall recommend to the Governor for appointment, one council member.

(2) The Assembly Minority Floor Leader shall recommend to the Governor for appointment, one council member.

(3) The President pro Tempore of the Senate shall recommend to the Governor for appointment, one council member.

(4) The Senate Minority Floor Leader shall recommend to the Governor for appointment, one council member.

(5) The County Supervisors Association of California shall recommend to the Governor for appointment, one council member.

(d) The Mental Health Master Plan shall be completed and submitted to the Legislature and the Governor by October 1, 1991.
(Added by Stats.1989, c. 1313, § 1.)

§ 5733. Elements of plan; analysis

The Mental Health Master Plan shall include, but not be limited to, an analysis of all of the following:

(a) The specific planning elements required by Public Law 99–660.

(b) Identification of priority populations to be served and a definition of those priority populations.

(c) Proposed methods of allocating resources which result in the most effective system of care possible for the priority populations.

(d) Proposed methods of evaluating the effectiveness of current service delivery methods and the populations which are best served by these models of care.

(e) Recommendations related to the governance and responsibilities of the state, county, or other administrative structures for the delivery of mental health programs which are cost–effective and provide the highest quality of care.
(Added by Stats.1989, c. 1313, § 1.)

Chapter 4 OPERATION AND ADMINISTRATION

§ 5750. Administrative duties; standards; rules and regulations; exception for psychiatric health facilities

(a) The State Department of Mental Health shall administer this part and shall adopt standards for approval of mental health services, and rules and regulations necessary thereto. However, these standards, rules, and regulations shall be adopted only after consultation with the California Council on Mental Health and the California Conference of Local Mental Health Directors. Adoption of these standards, rules, and regulations shall require approval by the California Conference of Local Mental Health Directors by majority vote of those present at an official session except for regulations pertaining to psychiatric health facilities. For regulations pertaining to psychiatric health facilities, the vote by the conference, following consultation, shall be only advisory to the State Department of Mental Health.

(b) If the conference refuses or fails to approve standards, rules, or regulations submitted to it by the State Department of Mental Health for its approval, the State Department of Mental Health may submit these standards, rules, or regulations to the conference at its next meeting, and if the conference again refuses to approve them, the matter shall be referred for decision to a committee composed of the Secretary of the Health and Welfare Agency, the Director of Mental Health, the President of the California Conference of Local Mental Health Directors, the Chairman of the California Council on Mental Health, and a member designated by the State Advisory Health Council.

(c)(1) From July 1, 1991, to June 30, 1993, inclusive, the conference shall not approve regulations of the State Department of Mental Health. The impact on this subdivision of regulatory timing shall be included in the department's report to the Legislature on September 30, 1992.

(2) The department shall continue during that period to involve the conference in the development of all regulations which affect local mental health programs, prior to the promulgation of those regulations pursuant to the Administrative Procedure Act.
(Added by Stats.1968, c. 989, p. 1924, § 2, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1441, § 44, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1971, c. 1593, p. 3352, § 401, operative July 1, 1973; Stats.1977, c. 1252, p. 4592, § 618, operative July 1, 1978; Stats.1978, c. 429, p. 1459, § 214, eff. July 17, 1978, operative July 1, 1978; Stats.1980, c. 1089, p. 3499, § 17; Stats.1984, c. 1327, § 85, eff. Sept. 25, 1984; Stats.1984, c. 1329, § 65; Stats.1985, c.

1232, § 27, eff. Sept. 30, 1985; Stats.1988, c. 1047, § 4, eff. Sept. 20, 1988; Stats.1991, c. 89 (A.B.1288), § 176, eff. June 30, 1991; Stats.1991, c. 611 (A.B.1491), § 67, eff. Oct. 7, 1991.)

§ 5750.1. Application of department or county standards, rules or policy

Notwithstanding Section 5750, any standard, rule, or policy, not directly the result of a statutory or administrative law change, adopted by the department or county during the term of an existing county performance contract shall not apply to the negotiated rate and net amount terms of that contract under Sections 5705 and 5716, but shall only apply to contracts established after adoption of the standard, rule, or policy.

(Added by Stats.1987, c. 884, § 6. Amended by Stats.1991, c. 89 (A.B.1288), § 177, eff. June 30, 1991; Stats.1991, c. 611 (A.B.1491), § 68, eff. Oct. 7, 1991.)

§ 5751. Directors of local health services; qualifications; regulations

(a) Regulations pertaining to the qualifications of directors of local mental health services shall be administered in accordance with Section 5607. These standards may include the maintenance of records of service which shall be reported to the State Department of Mental Health in a manner and at times as it may specify.

(b) Regulations pertaining to the position of director of local mental health services, where the local director is other than the local health officer or medical administrator of the county hospitals, shall require that the director be a psychiatrist, psychologist, clinical social worker, marriage and family therapist, registered nurse, or hospital administrator, who meets standards of education and experience established by the Director of Mental Health. Where the director is not a psychiatrist, the program shall have a psychiatrist licensed to practice medicine in this state and who shall provide to patients medical care and services as authorized by Section 2051 of the Business and Professions Code.

(c) The regulations shall be adopted in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats.1973, c. 1061, p. 2110, § 10. Amended by Stats.1977, c. 1252, p. 4593, § 618.5, operative July 1, 1978; Stats.1978, c. 726, p. 2280, § 1; Stats.1980, c. 972, p. 3084, § 2; Stats.1983, c. 500, § 1; Stats.1991, c. 89 (A.B.1288), § 178, eff. June 30, 1991; Stats.2002, c. 1013 (S.B.2026), § 98.)

§ 5751.1. Director of local mental health services; regulations

Regulations pertaining to the position of director of local mental health services, where the local director is other than the local health officer or medical administrator of the county hospitals, shall require that the director meet the standards of education and experience established by the Director of Mental Health and that the appointment be open on the basis of competence to all eligible disciplines pursuant to Section 5751. Regulations pertaining to the qualifications of directors of local mental health services shall be administered in accordance with Section 5607.

Where the director of local mental health services is not a psychiatrist, the program shall have a psychiatrist licensed to practice medicine in this state and who shall provide to patients medical care and services as authorized by Section 2137 of the Business and Professions Code.

(Added by Stats.1973, c. 1061, p. 2111, § 11. Amended by Stats.1977, c. 1252, p. 4593, § 619, operative July 1, 1978; Stats.1978, c. 726, p. 2281, § 2.)

§ 5751.2. Professional licensure of personnel; exemption; waiver

(a) Except as provided in this section, persons employed or under contract to provide mental health services pursuant to this part shall be subject to all applicable requirements of law regarding professional licensure, and no person shall be employed in local mental health programs pursuant to this part to provide services for which a license is required, unless the person possesses a valid license.

(b) Persons employed as psychologists and clinical social workers, while continuing in their employment in the same class as of January 1, 1979, in the same program or facility, including those persons on authorized leave, but not including intermittent personnel, shall be exempt from the requirements of subdivision (a).

(c) While registered with the licensing board of jurisdiction for the purpose of acquiring the experience required for licensure, persons employed or under contract to provide mental health services pursuant to this part as clinical social workers or marriage and family therapists shall be exempt from subdivision (a). Registration shall be subject to regulations adopted by the appropriate licensing board.

(d) The requirements of subdivision (a) shall be waived by the department for persons employed or under contract to provide mental health services pursuant to this part as psychologists who are gaining the experience required for licensure. A waiver granted under this subdivision may not exceed five years from the date of employment by, or contract with, a local mental health program for persons in the profession of psychology.

(e) The requirements of subdivision (a) shall be waived by the department for persons who have been recruited for employment from outside this state as psychologists, clinical social workers, or marriage and family therapists and whose experience is sufficient to gain admission to a licensing examination. A waiver granted under this subdivision may not exceed three years from the date of employment by, or contract with, a local mental health program for persons in these three professions who are recruited from outside this state.

(Formerly § 5600.2, added by Stats.1981, c. 412, p. 1607, § 6, eff. Sept. 11, 1981, operative Jan. 1, 1984. Amended by Stats.1987, c. 227, § 1; Stats.1988, c. 509, § 1; Stats.1989, c. 503, § 1; Stats.1990, c. 962 (A.B.3229), § 2. Renumbered 5751.2 and amended by Stats.1991, c. 611 (A.B.1491), § 37, eff. Oct. 7, 1991. Renumbered § 5603 and amended by Stats.1991, c. 612 (S.B.1112), § 2. Renumbered § 5751.2 and amended by Stats.1992, c. 1374 (A.B.14), § 19, eff. Oct. 28, 1992. Amended by Stats.1995, c. 712 (S.B.227), § 4; Stats.2002, c. 1013 (S.B.2026), § 99.)

§ 5751.7. Minors; admission with adults discouraged

For the purposes of this part and the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000)), the department shall ensure that, whenever feasible, minors shall not be admitted into psychiatric treatment with adults if the health facility has no specific separate housing arrangements, treatment staff, and treatment programs designed to serve children or adolescents. The director shall provide waivers to counties, upon their request, if this policy creates undue hardship in any county due to inadequate or unavailable alternative resources. In granting the waivers, the director shall require the county to establish specific treatment protocols and administrative procedures for identifying and providing appropriate treatment to minors admitted with adults.

However, notwithstanding any other provision of law, no minor may be admitted for psychiatric treatment into the same treatment ward as any adult receiving treatment who is in the custody of any jailor for a violent crime, is a known registered sex offender, or has a known history of, or exhibits inappropriate, sexual, or other violent behavior which would present a threat to the physical safety of minors.

(Added by Stats.1987, c. 1107, § 1, eff. Sept. 25, 1987.)

§ 5755.1. State mental health plan; submission for review and recommendations

The state mental health plan shall be submitted to the California Council on Mental Health and the Advisory Health Council or its successor for review and recommendations as to conformance with California's comprehensive statewide health plan. The state mental health plan shall be submitted for review and recommendations prior to amendments or changes thereto.

(Formerly § 5765, added by Stats.1968, c. 989, p. 1928, § 2, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1442, § 46, eff. Aug.

8, 1969, operative July 1, 1969; Stats.1971, c. 1593, p. 3356, § 412, operative July 1, 1973; Stats.1974, c. 486, p. 1122, § 4, eff. July 11, 1974; Stats.1978, c. 429, p. 1461, § 218, eff. July 17, 1978, operative July 1, 1978; Stats.1978, c. 852, p. 2701, § 11. Renumbered § 5755.1 and amended by Stats.1984, c. 1327, § 88, eff. Sept. 25, 1984; Stats.1985, c. 1232, § 29, eff. Sept. 30, 1985.)

§ 5768. New programs; development and implementation; review; licensure requirements; program application and plan; approval; placement of license in suspense; evaluation of programs

(a) Notwithstanding any other provision of law, except as to requirements relating to fire and life safety of persons with mental illness, the department, in its discretion, may permit new programs to be developed and implemented without complying with licensure requirements established pursuant to existing state law.

(b) Any program developed and implemented pursuant to subdivision (a) shall be reviewed at least once each six months, as determined by the department.

(c) The department may establish appropriate licensing requirements for these new programs upon a determination that the programs should be continued.

(d) Within six years, any program shall require a licensure category if it is to be continued. However, in the event that any agency other than the department is responsible for developing a licensure category and fails to do so within the six years, the program may continue to be developed and implemented pursuant to subdivisions (a) and (b) until such time that the licensure category is established.

(e)(1) A nongovernmental entity proposing a program shall submit a program application and plan to the local mental health director that describes at least the following components: clinical treatment programs, activity programs, administrative policies and procedures, admissions, discharge planning, health records content, health records service, interdisciplinary treatment teams, client empowerment, patient rights, pharmaceutical services, program space requirements, psychiatric and psychological services, rehabilitation services, restraint and seclusion, space, supplies, equipment, and staffing standards. If the local mental health director determines that the application and plan are consistent with local needs and satisfactorily address the above components, he or she may approve the application and plan and forward them to the department.

(2) Upon the department's approval, the local mental health director shall implement the program and shall be responsible for regular program oversight and monitoring. The department shall be notified in writing of the outcome of each review of the program by the local mental health director, or his or her designee, for compliance with program requirements. The department shall retain ultimate responsibility for approving the method for review of each program, and the authority for determining the appropriateness of the local program's oversight and monitoring activities.

(f) Governmental entities proposing a program shall submit a program application and plan to the department that describes at least the components described in subdivision (e). Upon approval, the department shall be responsible for program oversight and monitoring.

(g) Implementation of a program shall be contingent upon the department's approval, and the department may reject applications or require modifications as it deems necessary. The department shall respond to each proposal within 90 days of receipt.

(h) The State Department of Health Services shall allow an applicant approved by the department with a current health facility license to place its license in suspense for a period of six years. At that time the department, in consultation with the State Department of Health Services shall determine the most appropriate licensure for the program, pursuant to subdivisions (c) and (d).

(i) The department shall submit an evaluation to the Legislature of all pilot projects authorized pursuant to this section within five years of the commencement of operation of the pilot project, determining the effectiveness of that program or facility, or both, based on, but not limited to, changes in clinical indicators with respect to client functions.

(Added by Stats.1975, c. 1105, p. 2683, § 2. Amended by Stats.1984, c. 1327, § 90, eff. Sept. 25, 1984; Stats.1994, c. 678 (S.B.2017), § 2; Stats.1998, c. 686 (A.B.2682), § 2.)

§ 5768.5. Discharge of patient; distribution of written aftercare plan; components

(a) When a mental health patient is being discharged from any facility authorized under Section 5675 or 5768, the patient and the patient's conservator, guardian, or other legally authorized representative shall be given a written aftercare plan prior to the patient's discharge from the facility. The written aftercare plan shall include, to the extent known, the following components:

(1) The nature of the illness and followup required.

(2) Medications, including side effects and dosage schedules. If the patient was given an informed consent form with his or her medications, the form shall satisfy the requirement for information on side effects of the medications.

(3) Expected course of recovery.

(4) Recommendations regarding treatment that are relevant to the patient's care.

(5) Referrals to providers of medical and mental health services.

(6) Other relevant information.

(b) The patient shall be advised by facility personnel that he or she may designate another person to receive a copy of the aftercare plan. A copy of the aftercare plan shall be given to any person designated by the patient.

(c) For purposes of this section, "mental health patient" means a person who is admitted to the facility primarily for the diagnosis or treatment of a mental disorder.

(Added by Stats.1997, c. 512 (A.B.482), § 3. Amended by Stats.1998, c. 346 (A.B.2746), § 2; Stats.1999, c. 83 (S.B.966), § 200.)

§ 5770. Provision of services by department

Notwithstanding any other provision of law, the department may directly, or by contract, with any public or private agency, provide any of the services under this division when the director determines that the services are necessary to protect the public health, safety, or welfare.

(Added by Stats.1984, c. 1327, § 91, eff. Sept. 25, 1984.)

§ 5770.5. Development and support of local programs assisting self–help groups

The department shall encourage county mental health programs to develop and support local programs designed to provide technical assistance to self–help groups for the purposes of maintaining existing groups, as well as to stimulate development of new self–help groups from locally defined needs.

(Added by Stats.1985, c. 1286, § 14.5, eff. Sept. 30, 1985.)

§ 5771. California Mental Health Planning Council; purpose; membership; officers; terms; modification in structure of council

(a) Pursuant to Public Law 102–321, there is the California Mental Health Planning Council. The purpose of the planning council shall be to fulfill those mental health planning requirements mandated by federal law.

(b)(1) The planning council shall have 40 members, to be comprised of members appointed from both the local and state levels in order to ensure a balance of state and local concerns relative to planning.

(2) As required by federal law, eight members of the planning council shall represent various state departments.

(3) Members of the planning council shall be appointed in a manner that will ensure that at least one–half are persons with mental disabilities, family members of persons with mental disabilities, and representatives of organizations advocating on behalf of persons with mental disabilities. Persons with mental disabilities and family members shall be represented in equal numbers.

(4) The Director of Mental Health shall make appointments from among nominees from various mental health constituency organizations, which shall include representatives of consumer–related advocacy organizations, representatives of mental health professional and provider organizations, and representatives who are direct service providers from both the public and private sectors. The director shall also appoint one representative of the California Coalition on Mental Health.

(c) Members should be balanced according to demography, geography, gender, and ethnicity. Members should include representatives with interest in all target populations, including, but not limited to, children and youth, adults, and older adults.

(d) The planning council shall annually elect a chairperson and a chair–elect.

(e) The term of each member shall be three years, to be staggered so that approximately one–third of the appointments expire in each year.

(f) In the event of changes in the federal requirements regarding the structure and function of the planning council, or the discontinuation of federal funding, the State Department of Mental Health shall propose to the Legislature modifications in the structure of the planning council that the department deems appropriate.

(Added by Stats.1992, c. 1374 (A.B.14), § 45, eff. Oct. 28, 1992. Amended by Stats.1993, c. 564 (S.B.43), § 5; Stats.1995, c. 712 (S.B.227), § 5; Stats.1998, c. 686 (A.B.2682), § 3; Stats.2003, c. 71 (A.B.376), § 1.)

§ 5771.1. Members of Mental Health Planning Council

The members of the Mental Health Services Oversight and Accountability Commission established pursuant to Section 5845 are members of the California Mental Health Planning Council. They serve in an ex officio capacity when the council is performing its statutory duties pursuant to Section 5772. Such membership shall not affect the composition requirements for the council specified in Section 5771.

(Added by Initiative Measure (Prop. 63, § 11, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

§ 5771.3. Mental health planning council; staff from state mental health department

The California Mental Health Planning Council may utilize staff of the State Department of Mental Health, to the extent they are available, and the staff of any other public or private agencies that have an interest in the mental health of the public and that are able and willing to provide those services.

(Added by Stats.1992, c. 1374 (A.B.14), § 46, eff. Oct. 28, 1992. Amended by Stats.1993, c. 564 (S.B.43), § 6; Stats.1995, c. 712 (S.B.227), § 6; Stats.1998, c. 686 (A.B.2682), § 4.)

§ 5771.5. Executive officer for mental health planning council; appointment; other staff

(a)(1) The Chairperson of the California Mental Health Planning Council, with the concurrence of a majority of the members of the California Mental Health Planning Council, shall appoint an executive officer who shall have those powers delegated to him or her by the council in accordance with this chapter.

(2) The executive officer shall be exempt from civil service.

(b) Within the limit of funds allotted for these purposes, the California Mental Health Planning Council may appoint other staff it may require according to the rules and procedures of the civil service system.

(Added by Stats.1992, c. 1374 (A.B.14), § 47, eff. Oct. 28, 1992. Amended by Stats.1993, c. 564 (S.B.43), § 7; Stats.1995, c. 712 (S.B.227), § 7; Stats.1998, c. 686 (A.B.2682), § 5.)

§ 5772. Powers and duties of mental health planning council

The California Mental Health Planning Council shall have the powers and authority necessary to carry out the duties imposed upon it by this chapter, including, but not limited to, the following:

(a) To advocate for effective, quality mental health programs.

(b) To review, assess, and make recommendations regarding all components of California's mental health system, and to report as necessary to the Legislature, the State Department of Mental Health, local boards, and local programs.

(c) To review program performance in delivering mental health services by annually reviewing performance outcome data as follows:

(1) To review and approve the performance outcome measures.

(2) To review the performance of mental health programs based on performance outcome data and other reports from the State Department of Mental Health and other sources.

(3) To report findings and recommendations on programs' performance annually to the Legislature, the State Department of Mental Health, and the local boards.

(4) To identify successful programs for recommendation and for consideration of replication in other areas. As data and technology are available, identify programs experiencing difficulties.

(d) When appropriate, make a finding pursuant to Section 5655 that a county's performance is failing in a substantive manner. The State Department of Mental Health shall investigate and review the finding, and report the action taken to the Legislature.

(e) To advise the Legislature, the State Department of Mental Health, and county boards on mental health issues and the policies and priorities that this state should be pursuing in developing its mental health system.

(f) To periodically review the state's data systems and paperwork requirements to ensure that they are reasonable and in compliance with state and federal law.

(g) To make recommendations to the State Department of Mental Health on the award of grants to county programs to reward and stimulate innovation in providing mental health services.

(h) To conduct public hearings on the state mental health plan, the Substance Abuse and Mental Health Services Administration block grant, and other topics, as needed.

(i) To participate in the recruitment of candidates for the position of Director of Mental Health and provide advice on the final selection.

(j) In conjunction with other statewide and local mental health organizations, assist in the coordination of training and information to local mental health boards as needed to ensure that they can effectively carry out their duties.

(k) To advise the Director of Mental Health on the development of the state mental health plan and the system of priorities contained in that plan.

(*l*) To assess periodically the effect of realignment of mental health services and any other important changes in the state's mental health system, and to report its findings to the Legislature, the State Department of Mental Health, local programs, and local boards, as appropriate.

(m) To suggest rules, regulations, and standards for the administration of this division.

(n) When requested, to mediate disputes between counties and the state arising under this part.

(*o*) To employ administrative, technical, and other personnel necessary for the performance of its powers and duties, subject to the approval of the Department of Finance.

(p) To accept any federal fund granted, by act of Congress or by executive order, for purposes within the purview of the California Mental Health Planning Council, subject to the approval of the Department of Finance.

(q) To accept any gift, donation, bequest, or grants of funds from private and public agencies for all or any of the purposes within the purview of the California Mental Health Planning Council, subject to the approval of the Department of Finance.
(Added by Stats.1992, c. 1374 (A.B.14), § 48, eff. Oct. 28, 1992. Amended by Stats.1993, c. 564 (S.B.43), § 8; Stats.1995, c. 712 (S.B.227), § 8; Stats.1998, c. 686 (A.B.2682), § 6.)

§ 5772.5. Planning council; duties; legislative intent

(a) It is the intent of the Legislature that the planning council do all of the following:

(1) Review and monitor the implementation of counties' efforts to improve the provision and quality of mental health services to foster children.

(2) Advocate to reduce the stigma and discrimination against persons with mental health needs.

(3) Work with advocacy organizations to remove barriers facing children and youth who need mental health care.

(b) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.
(Added by Stats.2003, c. 71 (A.B.376), § 2.)

REPEAL

For repeal of this section, see its terms.

Part 2.5 MENTAL HEALTH MANAGED CARE CONTRACTS

OPERATION AND IMPLEMENTATION

Implementation and inoperative date of Part 2.5, see Welfare and Institutions Code § 5780.

§ 5775. Implementation of managed mental health care for Medi–Cal beneficiaries through fee–for–service or capitated rate contracts with mental health plans

(a) Notwithstanding any other provision of state law, the State Department of Mental Health shall implement managed mental health care for Medi–Cal beneficiaries through fee–for–service or capitated rate contracts with mental health plans, including individual counties, counties acting jointly, any qualified individual or organization, or a nongovernmental entity. A contract may be exclusive and may be awarded on a geographic basis.

(b) Two or more counties acting jointly may agree to deliver or subcontract for the delivery of mental health services. The agreement may encompass all or any portion of the mental health services provided pursuant to this part. This agreement shall not relieve the individual counties of financial responsibility for providing these services. Any agreement between counties shall delineate each county's responsibilities and fiscal liability.

(c) The department shall offer to contract with each county for the delivery of mental health services to that county's Medi–Cal beneficiary population prior to offering to contract with any other entity, upon terms at least as favorable as any offered to a noncounty contract provider. If a county elects not to contract with the department, does not renew its contract, or does not meet the minimum standards set by the department, the department may elect to contract with any other governmental or nongovernmental entity for the delivery of mental health services in that county and may administer the delivery of mental health services until a contract for a mental health plan is implemented. The county may not subsequently contract to provide mental health services under this part unless the department elects to contract with the county.

(d) If a county does not contract with the department to provide mental health services, the county shall transfer the responsibility for community Medi–Cal reimbursable mental health services and the anticipated county matching funds needed for community Medi–Cal mental health services in that county to the department. The amount of the anticipated county matching funds shall be determined by the department in consultation with the county, and shall be adjusted annually. The amount transferred shall be based on historical cost, adjusted for changes in the number of Medi–Cal beneficiaries and other relevant factors. The anticipated county matching funds shall be used by the department to contract with another entity for mental health services, and shall not be expended for any other purpose but the provision of those services and related administrative costs. The county shall continue to deliver non–Medi–Cal reimbursable mental health services in accordance with this division, and subject to subdivision (i) of Section 5777.

(e) Whenever the department determines that a mental health plan has failed to comply with this part or any regulations adopted pursuant to this part that implement this part, the department may impose sanctions, including, but not limited to, fines, penalties, the withholding of payments, special requirements, probationary or corrective actions, or any other actions deemed necessary to prompt and ensure contract and performance compliance. If fines are imposed by the department, they may be withheld from the state matching funds provided to a mental health plan for Medi–Cal mental health services.

(f) Notwithstanding any other provision of law, emergency regulations adopted pursuant to Section 14680 to implement the second phase of mental health managed care as provided in this part shall remain in effect until * * * permanent regulations are adopted, or June 30, 2006, whichever occurs first.

(g) The department shall convene at least two public hearings to clarify new federal regulations recently enacted by the federal Centers for Medicare and Medicaid Services that affect the state's second phase of mental health managed care and shall report to the Legislature on the results of these hearings through the 2005–06 budget deliberations.

(h) The department may adopt emergency regulations necessary to implement Part 438 (commencing with Section 438.1) of Subpart A of Subchapter C of Chapter IV of Title 42 of the Code of Federal Regulations, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of emergency regulations to implement this part, that are filed with the Office of Administrative Law within one year of the date on which the act that amended this subdivision in 2003 took effect, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare, and shall remain in effect for no more than 180 days.
(Added by Stats.1994, c. 633 (A.B.633), § 1.5, eff. Sept. 20, 1994. Amended by Stats.1996, c. 515 (A.B.2801), § 3, eff. Sept. 16, 1996; Stats.1997, c. 648 (A.B.1306), § 1, eff. Oct. 6, 1997; Stats.2003, c. 230 (A.B.1762), § 56, eff. Aug. 11, 2003; Stats.2004, c. 228 (S.B.1103), § 9.5, eff. Aug. 16, 2004; Stats.2005, c. 80 (A.B.131), § 19, eff. July 19, 2005.)

§ 5776. Department and mental health plan contractors; compliance with federal and state laws and regulations; intent

(a) The department and its mental health plan contractors shall comply with all applicable federal laws, regulations, and guidelines, and, except as provided in this part, all applicable state statutes and regulations.

(b) If federal requirements that affect the provisions of this part are changed, it is the intent of the Legislature that state requirements be revised to comply with those changes.
(Added by Stats.1994, c. 633 (A.B.757), § 1.5, eff. Sept. 20, 1994.)

OPERATION AND IMPLEMENTATION

Implementation and inoperative date of Part 2.5, see Welfare and Institutions Code § 5780.

§ 5777. Mental health care contractor; financial risk for services; plan and county service protocols; plan duties; contract renewal and termination; oversight; obligations

(a)(1) Except as otherwise specified in this part, a contract entered into pursuant to this part shall include a provision that the mental health plan contractor shall bear the financial risk for the cost of providing medically necessary mental health services to Medi–Cal beneficiaries irrespective of whether the cost of those services exceeds the payment set forth in the contract. If the expenditures for services do not exceed the payment set forth in the contract, the mental health plan contractor shall report the unexpended amount to the department, but shall not be required to return the excess to the department.

(2) If the mental health plan is not the county's, the mental health plan may not transfer the obligation for any mental health services to Medi–Cal beneficiaries to the county. The mental health plan may purchase services from the county. The mental health plan shall establish mutually agreed–upon protocols with the county that clearly establish conditions under which beneficiaries may obtain non–Medi–Cal reimbursable services from the county. Additionally, the plan shall establish mutually agreed–upon protocols with the county for the conditions of transfer of beneficiaries who have lost Medi–Cal eligibility to the county for care under Part 2 (commencing with Section 5600), Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850).

(3) The mental health plan shall be financially responsible for ensuring access and a minimum required scope of benefits, consistent with state and federal requirements, to the services to the Medi–Cal beneficiaries of that county regardless of where the beneficiary resides. The department shall require that the definition of medical necessity used, and the minimum scope of benefits offered, by each mental health contractor be the same, except to the extent that any variations receive prior federal approval and are consistent with state and federal statutes and regulations.

(b) Any contract entered into pursuant to this part may be renewed if the plan continues to meet the requirements of this part, regulations promulgated pursuant thereto, and the terms and conditions of the contract. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may base the decision to renew on timely completion of a mutually agreed upon plan of correction of any deficiencies, submissions of required information in a timely manner, or other conditions of the contract. At the discretion of the department, each contract may be renewed for a period not to exceed three years.

(c)(1) The obligations of the mental health plan shall be changed only by contract or contract amendment.

(2) A change may be made during a contract term or at the time of contract renewal, where there is a change in obligations required by federal or state law or when required by a change in the interpretation or implementation of any law or regulation. To the extent permitted by federal law and except as provided under subdivision (r) of Section 5778, if any change in obligations occurs that affects the cost to the mental health plan of performing under the terms of its contract, the department may reopen contracts to negotiate the state General Fund allocation to the mental health plan under Section 5778, if the mental health plan is reimbursed through a fee–for–service payment system, or the capitation rate to the mental health plan under Section 5779, if the mental health plan is reimbursed through a capitated rate payment system. During the time period required to redetermine the allocation or rate, payment to the mental health plan of the allocation or rate in effect at the time the change occurred shall be considered interim payments and shall be subject to increase or decrease, as the case may be, effective as of the date on which the change is effective.

(3) To the extent permitted by federal law, either the department or the mental health plan may request that contract negotiations be reopened during the course of a contract due to substantial changes in the cost of covered benefits that result from an unanticipated event.

(d) The department shall immediately terminate a contract when the director finds that there is an immediate threat to the health and safety of Medi–Cal beneficiaries. Termination of the contract for other reasons shall be subject to reasonable notice of the department's intent to take that action and notification of affected beneficiaries. The plan may request a public hearing by the Office of Administrative Hearings.

(e) A plan may terminate its contract in accordance with the provisions in the contract. The plan shall provide written notice to the department at least 180 days prior to the termination or nonrenewal of the contract.

(f) Upon the request of the Director of Mental Health, the Director of the Department of Managed Health Care may exempt a mental health plan contractor or a capitated rate contract from the Knox–Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code). These exemptions may be subject to conditions the director deems appropriate. Nothing in this part shall be construed to impair or diminish the authority of the Director of the Department of Managed Health Care under the Knox–Keene Health Care Service Plan Act of 1975, nor shall anything in this part be construed to reduce or otherwise limit the obligation of a mental health plan contractor licensed as a health care service plan to comply with the requirements of the Knox–Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated thereunder. The Director of Mental Health, in consultation with the Director of the Department of Managed Health Care, shall analyze the appropriateness of licensure or application of applicable standards of the Knox–Keene Health Care Service Plan Act of 1975.

(g) The department, pursuant to an agreement with the State Department of Health Services, shall provide oversight to the mental health plans to ensure quality, access, and cost efficiency. At a minimum, the department shall, through a method independent of any agency of the mental health plan contractor, monitor the level and quality of services provided, expenditures pursuant to the contract, and conformity with federal and state law.

(h) County employees implementing or administering a mental health plan act in a discretionary capacity when they determine whether or not to admit a person for care or to provide any level of care pursuant to this part.

(i) If a county chooses to discontinue operations as the local mental health plan, the new plan shall give reasonable consideration to affiliation with nonprofit community mental health agencies that were under contract with the county and that meet the mental health plan's quality and cost efficiency standards.

(j) Nothing in this part shall be construed to modify, alter, or increase the obligations of counties as otherwise limited and defined in Chapter 3 (commencing with Section 5700) of Part 2. The county's maximum obligation for services to persons not eligible for Medi–Cal shall be no more than the amount of funds remaining in the mental health subaccount pursuant to Sections 17600, 17601, 17604, 17605, 17606, and 17609 after fulfilling the Medi–Cal contract obligations. (Added by Stats.1994, c. 633 (A.B.757), § 1.5, eff. Sept. 20, 1994. Amended by Stats.1996, c. 190 (S.B.1192), § 1, eff. July 22, 1996; Stats.1997, c. 648 (A.B.1306), § 2, eff. Oct. 6, 1997; Stats.1999, c. 525 (A.B.78), § 192; Stats.2000, c. 857 (A.B.2903), § 79; Stats.2002, c. 642 (A.B.1454), § 2.)

OPERATION AND IMPLEMENTATION

Implementation and inoperative date of Part 2.5, see Welfare and Institutions Code § 5780.

§ 5777.5. Mental health plans providing Medi–Cal services; memorandum of understanding

(a)(1) The department shall require any mental health plan that provides Medi–Cal services to enter into a memorandum of

understanding with any Medi–Cal managed care plan that provides Medi–Cal health services to some of the same Medi–Cal recipients served by the mental health plan. The memorandum of understanding shall comply with applicable regulations.

(2) For purposes of this section, a "Medi–Cal managed care plan" means any prepaid health plan or Medi–Cal managed care plan contracting with the State Department of Health Services to provide services to enrolled Medi–Cal beneficiaries under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9, or Part 4 (commencing with Section 101525) of Division 101 of the Health and Safety Code.

(b) The department shall require the memorandum of understanding to include all of the following:

(1) A process or entity to be designated by the local mental health plan to receive notice of actions, denials, or deferrals from the Medi–Cal managed care plan, and to provide any additional information requested in the deferral notice as necessary for a medical necessity determination.

(2) A requirement that the local mental health plan respond by the close of the business day following the day the deferral notice is received.

(c) The department may sanction a mental health plan pursuant to paragraph (1) of subdivision (e) of Section 5775 for failure to comply with this section.

(d) This section shall apply to any contracts entered into, amended, modified, extended, or renewed on or after January 1, 2001.

(Added by Stats.2000, c. 811 (S.B.745), § 3.)

Operation and Implementation

Implementation and inoperative date of Part 2.5, see Welfare and Institutions Code § 5780.

§ 5777.6. Local mental health plans; establishment of procedure for access to outpatient services

(a) Each local mental health plan shall establish a procedure to ensure access to outpatient mental health services, as required by the Early Periodic Screening and Diagnostic Treatment program standards, for any child in foster care who has been placed outside his or her county of adjudication.

(b) The procedure required by subdivision (a) may be established through one or more of the following:

(1) The establishment of, and federal approval, if required, of, a statewide system or procedure.

(2) An arrangement between local mental health plans for reimbursement for services provided by a mental health plan other than the mental health plan in the county of adjudication and designation of an entity to provide additional information needed for approval or reimbursement. This arrangement shall not require providers who are already credentialed or certified by the mental health plan in the beneficiary's county of residence to be credentialed or certified by, or to contract with, the mental health plan in the county of adjudication.

(3) Arrangements between the mental health plan in the county of adjudication and mental health providers in the beneficiary's county of residence for authorization of, and reimbursement for, services. This arrangement shall not require providers credentialed or certified by, and in good standing with, the mental health plan in the beneficiary's county of residence to be credentialed or certified by the mental health plan in the county of adjudication.

(c) The department shall collect and keep statistics that will enable the department to compare access to outpatient specialty mental health services by foster children placed in their county of adjudication with access to outpatient specialty mental health services by foster children placed outside of their county of adjudication.

(Added by Stats.2000, c. 811 (S.B.745), § 4.)

Operation and Implementation

Implementation and inoperative date of Part 2.5, see Welfare and Institutions Code § 5780.

§ 5778. Mental health services; fee–for–service payment system; procedures

(a) This section shall be limited to mental health services reimbursed through a fee–for–service payment system.

(b) During the initial phases of the implementation of this part, as determined by the department, the mental health plan contractor and subcontractors shall submit claims under the Medi–Cal program for eligible services on a fee–for–service basis.

(c) A qualifying county may elect, with the approval of the department, to operate under the requirements of a capitated, integrated service system field test pursuant to Section 5719.5 rather than this part, in the event the requirements of the two programs conflict. A county that elects to operate under that section shall comply with all other provisions of this part that do not conflict with that section.

(d)(1) No sooner than October 1, 1994, state matching funds for Medi–Cal fee–for–service acute psychiatric inpatient services, and associated administrative days, shall be transferred to the department. No later than July 1, 1997, upon agreement between the department and the State Department of Health Services, state matching funds for the remaining Medi–Cal fee–for–service mental health services and the state matching funds associated with field test counties under Section 5719.5 shall be transferred to the department.

(2) The department, in consultation with the State Department of Health Services, a statewide organization representing counties, and a statewide organization representing health maintenance organizations shall develop a timeline for the transfer of funding and responsibility for fee–for–service mental health services from Medi–Cal managed care plans to mental health plans. In developing the timeline, the department shall develop screening, referral, and coordination guidelines to be used by Medi–Cal managed care plans and mental health plans.

(e) The department shall allocate the contracted amount at the beginning of the contract period to the mental health plan. The allocated funds shall be considered to be funds of the plan that may be held by the department. The department shall develop a methodology to ensure that these funds are held as the property of the plan and shall not be reallocated by the department or other entity of state government for other purposes.

(f) Beginning in the fiscal year following the transfer of funds from the State Department of Health Services, the state matching funds for Medi–Cal mental health services shall be included in the annual budget for the department. The amount included shall be based on historical cost, adjusted for changes in the number of Medi–Cal beneficiaries and other relevant factors.

(g) Initially, the mental health plans shall use the fiscal intermediary of the Medi–Cal program of the State Department of Health Services for the processing of claims for inpatient psychiatric hospital services and may be required to use that fiscal intermediary for the remaining mental health services. The providers for other Short–Doyle Medi–Cal services shall not be initially required to use the fiscal intermediary but may be required to do so on a date to be determined by the department. The department and its mental health plans shall be responsible for the initial incremental increased matching costs of the fiscal intermediary for claims processing and information retrieval associated with the operation of the services funded by the transferred funds.

(h) The mental health plans, subcontractors, and providers of mental health services shall be liable for all federal audit exceptions or disallowances based on their conduct or determinations. The mental health plan contractors shall not be liable for federal audit exceptions or disallowances based on the state's conduct or determinations. The department and the State Department of Health

Services shall work jointly with mental health plans in initiating any necessary appeals. The State Department of Health Services may offset the amount of any federal disallowance or audit exception against subsequent claims from the mental health plan or subcontractor. This offset may be done at any time, after the audit exception or disallowance has been withheld from the federal financial participation claim made by the State Department of Health Services. The maximum amount that may be withheld shall be 25 percent of each payment to the plan or subcontractor.

(i) The mental health plans shall have sufficient funds on deposit with the department as the matching funds necessary for federal financial participation to ensure timely payment of claims for acute psychiatric inpatient services and associated administrative days. The department and the State Department of Health Services, in consultation with a statewide organization representing counties, shall establish a mechanism to facilitate timely availability of those funds. Any funds held by the state on behalf of a plan shall be deposited in a mental health managed care deposit fund and shall accrue interest to the plan. The department shall exercise any necessary funding procedures pursuant to Section 12419.5 of the Government Code and Sections 8776.6 and 8790.8 of the State Administrative Manual regarding county claim submission and payment.

(j)(1) The goal for funding of the future capitated system shall be to develop statewide rates for beneficiary, by aid category and with regional price differentiation, within a reasonable time period. The formula for distributing the state matching funds transferred to the department for acute inpatient psychiatric services to the participating counties shall be based on the following principles:

(A) Medi–Cal state General Fund matching dollars shall be distributed to counties based on historic Medi–Cal acute inpatient psychiatric costs for the county's beneficiaries and on the number of persons eligible for Medi–Cal in that county.

(B) All counties shall receive a baseline based on historic and projected expenditures up to October 1, 1994.

(C) Projected inpatient growth for the period October 1, 1994, to June 30, 1995, inclusive, shall be distributed to counties below the statewide average per eligible person on a proportional basis. The average shall be determined by the relative standing of the aggregate of each county's expenditures of mental health Medi–Cal dollars per beneficiary. Total Medi–Cal dollars shall include both fee–for–service Medi–Cal and Short–Doyle Medi–Cal dollars for both acute inpatient psychiatric services, outpatient mental health services, and psychiatric nursing facility services, both in facilities that are not designated as institutions for mental disease and for beneficiaries who are under 22 years of age and beneficiaries who are over 64 years of age in facilities that are designated as institutions for mental disease.

(D) There shall be funds set aside for a self–insurance risk pool for small counties. The department may provide these funds directly to the administering entity designated in writing by all counties participating in the self–insurance risk pool. The small counties shall assume all responsibility and liability for appropriate administration of these funds. For purposes of this subdivision, "small counties" means counties with less than 200,000 population. Nothing in this paragraph shall in any way obligate the state or the department to provide or make available any additional funds beyond the amount initially appropriated and set aside for each particular fiscal year, unless otherwise authorized in statute or regulations, nor shall the state or the department be liable in any way for mismanagement of loss of funds by the entity designated by the counties under this paragraph.

(2) The allocation method for state funds transferred for acute inpatient psychiatric services shall be as follows:

(A) For the 1994–95 fiscal year, an amount equal to 0.6965 percent of the total shall be transferred to a fund established by small counties. This fund shall be used to reimburse mental health plans in small counties for the cost of acute inpatient psychiatric services in excess of the funding provided to the mental health plan for risk reinsurance, acute inpatient psychiatric services and associated administrative days, alternatives to hospital services as approved by participating small counties, or for costs associated with the administration of these moneys. The methodology for use of these moneys shall be determined by the small counties, through a statewide organization representing counties, in consultation with the department.

(B) The balance of the transfer amount for the 1994–95 fiscal year shall be allocated to counties based on the following formula:

County	Percentage
Alameda	3.5991
Alpine	.0050
Amador	.0490
Butte	.8724
Calaveras	.0683
Colusa	.0294
Contra Costa	1.5544
Del Norte	1359
El Dorado	2272
Fresno	2.5612
Glenn	.0597
Humboldt	.1987
Imperial	.6269
Inyo	.0802
Kern	2.6309
Kings	.4371
Lake	.2955
Lassen	.1236
Los Angeles	31.3239
Madera	.3882
Marin	1.0290
Mariposa	.0501
Mendocino	.3038
Merced	.5077
Modoc	.0176
Mono	.0096
Monterey	.7351
Napa	.2909
Nevada	.1489
Orange	8.0627
Placer	.2366
Plumas	.0491
Riverside	4.4955
Sacramento	3.3506
San Benito	.1171
San Bernardino	6.4790
San Diego	12.3128
San Francisco	3.5473
San Joaquin	1.4813
San Luis Obispo	.2660
San Mateo	.0000
Santa Barbara	.0000
Santa Clara	1.9284
Santa Cruz	1.7571
Shasta	.3997
Sierra	.0105
Siskiyou	.1695
Solano	.0000
Sonoma	.5766
Stanislaus	1.7855
Sutter/Yuba	.7980
Tehama	.1842
Trinity	.0271
Tulare	2.1314

County	Percentage
Tuolumne	.2646
Ventura	.8058
Yolo	.4043

(k) The allocation method for the state funds transferred for subsequent years for acute inpatient psychiatric and other mental health services shall be determined by the department in consultation with a statewide organization representing counties.

(*l*) The allocation methodologies described in this section shall only be in effect while federal financial participation is received on a fee–for–service reimbursement basis. When federal funds are capitated, the department, in consultation with a statewide organization representing counties, shall determine the methodology for capitation consistent with federal requirements.

(m) The formula that specifies the amount of state matching funds transferred for the remaining Medi–Cal fee–for–service mental health services shall be determined by the department in consultation with a statewide organization representing counties. This formula shall only be in effect while federal financial participation is received on a fee–for–service reimbursement basis.

(n) Upon the transfer of funds from the budget of the State Department of Health Services to the department pursuant to subdivision (d), the department shall assume the applicable program oversight authority formerly provided by the State Department of Health Services, including, but not limited to, the oversight of utilization controls as specified in Section 14133. The mental health plan shall include a requirement in any subcontracts that all inpatient subcontractors maintain necessary licensing and certification. Mental health plans shall require that services delivered by licensed staff are within their scope of practice. Nothing in this part shall prohibit the mental health plans from establishing standards that are in addition to the minimum federal and state requirements, provided that these standards do not violate federal and state Medi–Cal requirements and guidelines.

(*o*) Subject to federal approval and consistent with state requirements, the mental health plan may negotiate rates with providers of mental health services.

(p) Under the fee–for–service payment system, any excess in the payment set forth in the contract over the expenditures for services by the plan shall be spent for the provision of mental health services and related administrative costs.

(q) Nothing in this part shall limit the mental health plan from being reimbursed appropriate federal financial participation for any qualified services even if the total expenditures for service exceeds the contract amount with the department. Matching nonfederal public funds shall be provided by the plan for the federal financial participation matching requirement.

(r)(1) The department shall establish, by regulation, a risk–sharing arrangement between the department and counties that contract with the department as mental health plans to provide an increase in the state General Fund allocation, subject to the availability of funds, to the mental health plan under this section, where there is a change in the obligations of the mental health plan required by federal or state law or regulation, or required by a change in the interpretation or implementation of any such law or regulation which significantly increases the cost to the mental health plan of performing under the terms of its contract.

(2) During the time period required to redetermine the allocation, payment to the mental health plan of the allocation in effect at the time the change occurred shall be considered an interim payment, and shall be subject to increase effective as of the date on which the change is effective.

(3) In order to be eligible to participate in the risk–sharing arrangement, the county shall demonstrate, to the satisfaction of the department, its commitment or plan of commitment of all annual funding identified in the total mental health resource base, from whatever source, but not including county funds beyond the required maintenance of effort, to be spent on mental health services. This determination of eligibility shall be made annually. The department may limit the participation in a risk–sharing arrangement of any county that transfers funds from the mental health account to the social services account or the health services account, in accordance with Section 17600.20 during the year to which the transfers apply to mental health plan expenditures for the new obligation that exceed the total mental health resource base, as measured before the transfer of funds out of the mental health account and not including county funds beyond the required maintenance of effort. The State Department of Mental Health shall participate in a risk–sharing arrangement only after a county has expended its total annual mental health resource base.

(Added by Stats.1994, c. 633 (A.B.757), § 1.5, eff. Sept. 20, 1994. Amended by Stats.1996, c. 190 (S.B.1192), § 2, eff. July 22, 1996; Stats. 1996, c. 197 (A.B.3483), § 19, eff. July 22, 1996; Stats.1996, c. 515 (A.B.2801), § 4, eff. Sept. 16, 1996; Stats.1997, c. 17 (S.B.947), § 150; Stats.1997, c. 648 (A.B.1306), § 3, eff. Oct. 6, 1997.)

Operation and Implementation

Implementation and inoperative date of Part 2.5, see Welfare and Institutions Code § 5780.

§ 5779. Mental health services; capitated rate payment system; procedures

(a) This section shall be limited to mental health services reimbursed through a capitated rate payment system.

(b) Upon mutual agreement, the department and the State Department of Health Services may combine the funds transferred under this part, other funds available pursuant to Chapter 5 (commencing with Section 17600) of Part 5 of Division 9, and federal financial participation funds to establish a contract for the delivery of mental health services to Medi–Cal beneficiaries under a capitated rate payment system. The combining of funds shall be done in consultation with a statewide organization representing counties. The combined funding shall be the budget responsibility of the department.

(c) The department, in consultation with a statewide organization representing counties, shall establish a methodology for a capitated rate payment system that is consistent with federal requirements.

(d) Capitated rate payments shall be made on a schedule specified in the contract with the mental health plan.

(e) The department may levy any necessary fines and audit disallowances to mental health plans relative to operations under this part. The mental health plans shall be liable for all federal audit exceptions or disallowances based on the plan's conduct or determinations. The mental health plan shall not be liable for federal audit exceptions or disallowances based on the state's conduct or determinations. The department shall work jointly with the mental health plan in initiating any necessary appeals. The department may offset the amount of any federal disallowance or audit exception against subsequent payment to the mental health plan at any time. The maximum amount that may be withheld shall be 25 percent of each payment to the mental health plan.

(Added by Stats.1994, c. 633 (A.B.757), § 1.5, eff. Sept. 20, 1994.)

Operation and Implementation

Implementation and inoperative date of Part 2.5, see Welfare and Institutions Code § 5780.

§ 5780. Implementation of part; inoperative date

(a) This part shall only be implemented to the extent that the necessary federal waivers are obtained. The director shall execute a declaration, to be retained by the director, that a waiver necessary to implement any provision of this part has been obtained.

(b) This part shall become inoperative on the date that, and only if, the director executes a declaration, to be retained by the director, that more than 10 percent of all counties fail to become mental health plan contractors, and no acceptable alternative contractors are available, or if more than 10 percent of all funds allocated for Medi–Cal mental

health services must be administered by the department because no acceptable plan is available.
(Added by Stats.1994, c. 633 (A.B.757), § 1.5, eff. Sept. 20 1994.)

§ 5781. Mental health services contract for Medi–Cal beneficiaries; per diem reimbursement rates; definitions

(a) Notwithstanding any other provision of law, a mental health plan may enter into a contract for the provision of mental health services for Medi–Cal beneficiaries with a hospital that provides for a per diem reimbursement rate for services that include room and board, routine hospital services, and all hospital–based ancillary services and that provides separately for the attending mental health professional's daily visit fee. The payment of these negotiated reimbursement rates to the hospital by the mental health plan shall be considered payment in full for each day of inpatient psychiatric and hospital care rendered to a Medi–Cal beneficiary, subject to third–party liability and patient share of costs, if any.

(b) This section shall not be construed to allow a hospital to interfere with, control, or otherwise direct the professional judgment of a physician and surgeon in a manner prohibited by Section 2400 of the Business and Professions Code or any other provision of law.

(c) For purposes of this section, "hospital" means a hospital that submits reimbursement claims for Medi–Cal psychiatric inpatient hospital services through the Medi–Cal fiscal intermediary as permitted by subdivision (g) of Section 5778.
(Added by Stats.2004, c. 748 (A.B.939), § 2.)

OPERATION AND IMPLEMENTATION

Implementation and inoperative date of Part 2.5, see Welfare and Institutions Code § 5780.

Part 3 ADULT AND OLDER ADULT MENTAL HEALTH SYSTEM OF CARE ACT

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

§ 5800. Short title

This part shall be known and may be cited as the Adult and Older Adult Mental Health System of Care Act.
(Added by Stats.1996, c. 153 (S.B.659), § 2.)

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

Article 1 LEGISLATIVE FINDINGS AND INTENT

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

§ 5801. Care system for older adults with severe mental illness; benefits; philosophy

(a) A system of care for adults and older adults with severe mental illness results in the highest benefit to the client, family, and community while ensuring that the public sector meets its legal responsibility and fiscal liability at the lowest possible cost.

(b) The underlying philosophy for these systems of care includes the following:

(1) Mental health care is a basic human service.

(2) Seriously mentally disordered adults and older adults are citizens of a community with all the rights, privileges, opportunities, and responsibilities accorded other citizens.

(3) Seriously mentally disordered adults and older adults usually have multiple disorders and disabling conditions and should have the highest priority among adults for mental health services.

(4) Seriously mentally disordered adults and older adults should have an interagency network of services with multiple points of access and be assigned a single person or team to be responsible for all treatment, case management, and community support services.

(5) The client should be fully informed and volunteer for all treatment provided, unless danger to self or others or grave disability requires temporary involuntary treatment.

(6) Clients and families should directly participate in making decisions about services and resource allocations that affect their lives.

(7) People in local communities are the most knowledgeable regarding their particular environments, issues, service gaps and strengths, and opportunities.

(8) Mental health services should be responsive to the unique characteristics of people with mental disorders including age, gender, minority and ethnic status, and the effect of multiple disorders.

(9) For the majority of seriously mentally disordered adults and older adults, treatment is best provided in the client's natural setting in the community. Treatment, case management, and community support services should be designed to prevent inappropriate removal from the natural environment to more restrictive and costly placements.

(10) Mental health systems of care shall have measurable goals and be fully accountable by providing measures of client outcomes and cost of services.

(11) State and county government agencies each have responsibilities and fiscal liabilities for seriously mentally disordered adults and seniors.
(Added by Stats.1996, c. 153 (S.B.659), § 2.)

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

§ 5802. Need for mental health system of care; models; goals

(a) The Legislature finds that a mental health system of care for adults and older adults with severe and persistent mental illness is vital for successful management of mental health care in California. Specifically:

(1) A comprehensive and coordinated system of care includes community–based treatment, outreach services and other early intervention strategies, case management, and interagency system components required by adults and older adults with severe and persistent mental illness.

(2) Mentally ill adults and older adults receive service from many different state and county agencies, particularly criminal justice, employment, housing, public welfare, health, and mental health. In a system of care these agencies collaborate in order to deliver integrated and cost–effective programs.

(3) The recovery of persons with severe mental illness and their financial means are important for all levels of government, business, and the community.

(4) System of care services which ensure culturally competent care for persons with severe mental illness in the most appropriate, least restrictive level of care are necessary to achieve the desired performance outcomes.

(5) Mental health service providers need to increase accountability and further develop methods to measure progress towards client outcome goals and cost effectiveness as required by a system of care.

(b) The Legislature further finds that the adult system of care model, beginning in the 1989–90 fiscal year through the implementation of Chapter 982 of the Statutes of 1988, provides models for adults and older adults with severe mental illness that can meet the performance outcomes required by the Legislature.

(c) The Legislature also finds that the system components established in adult systems of care are of value in providing greater benefit to adults and older adults with severe and persistent mental illness at a lower cost in California.

(d) Therefore, using the guidelines and principles developed under

the demonstration projects implemented under the adult system of care legislation in 1989, it is the intent of the Legislature to accomplish the following:

(1) Encourage each county to implement a system of care as described in this legislation for the delivery of mental health services to seriously mentally disordered adults and older adults.

(2) To promote system of care accountability for performance outcomes which enable adults with severe mental illness to reduce symptoms which impair their ability to live independently, work, maintain community supports, care for their children, stay in good health, not abuse drugs or alcohol, and not commit crimes.

(3) Maintain funding for the existing pilot adult system of care programs that meet contractual goals as models and technical assistance resources for future expansion of system of care programs to other counties as funding becomes available.

(4) Provide funds for counties to establish outreach programs and to provide mental health services and related medications, substance abuse services, supportive housing or other housing assistance, vocational rehabilitation, and other nonmedical programs necessary to stabilize homeless mentally ill persons or mentally ill persons at risk of being homeless, get them off the street, and into treatment and recovery, or to provide access to veterans' services that will also provide for treatment and recovery.

(Added by Stats.1996, c. 153 (S.B.659), § 2. Amended by Stats.1999, c. 617 (A.B.34), § 2, eff. Oct. 10, 1999.)

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

Article 2 ESTABLISHING NEW COUNTY SYSTEMS OF CARE

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

§ 5803. Request for proposals to develop system of care programs; ratings; funding of existing integrated service agencies or countywide systems of care

(a) The State Department of Mental Health shall issue a request for proposals to develop system of care programs no later than October 1 in any year in which the state budget provides new funds to expand the system of care provided for in this chapter. The request for proposals shall include the following:

(1) Proposals may be submitted as a regional system of care by counties acting jointly, independent countywide proposals, and proposals to serve discrete geographic areas within counties or for a specific integrated services agency team. Nothing in the request for proposal shall be construed to restrict a county from contracting for part or all services included in the demonstration project proposal.

(2) The department shall establish reporting requirements for direct and indirect costs, and these requirements may be included in the request for proposals.

(3) The department shall require that proposals identify resources necessary to measure client and cost outcome and interagency collaboration. Proposal guidelines shall clearly require identification of procedures to document outcomes.

(4) Proposals must be approved by the board of supervisors and the local mental health board or commission.

(b) The director shall prepare a method for rating proposals to assure objectivity and selection of the best qualified applications. New proposals shall be selected with consideration of regional balance across the state.

(c) The State Department of Mental Health shall fund counties with integrated service agencies or countywide systems of care funded under Chapter 982 of the Statutes of 1988, operating at the time of passage of this part. Those programs shall be funded under the provisions paragraph (2) of subdivision (a) of Section 5700 and shall be subject to all of the requirements and sanctions of this part.

(Added by Stats.1996, c. 153 (S.B.659), § 2.)

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

§ 5804. Integrated service agency component or countywide or regional system of care; inclusion of funding for development in performance contracts

(a) The State Department of Mental Health shall include funding under this part in the county's performance contracts required under Section 5650 for existing and new counties selected under this part to develop an integrated service agency component or a countywide or regional system of care. The contracts required pursuant to this part shall be exempt from the requirements of the Public Contract Code and the State Administrative Manual and shall be exempt from approval by the Department of General Services.

(b) Projects funded under this part, or continued under the provisions of subdivision (b) of Section 5802, shall be considered an ongoing program of service delivery as long as the county and any of its contractors meet client and cost outcomes as required in the annual performance contract established by the department.

(c) The department may terminate contracts funded under this part when the department determines that the county has failed to meet client and cost outcomes as required in the performance contract or are no longer able to operate programs under the provisions of this part.

(d) Counties and their contractors shall provide the department with all information needed to evaluate the financial and program performance of participating projects.

(Added by Stats.1996, c. 153 (S.B.659), § 2.)

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

§ 5805. Use of available state and matching funds

The State Department of Mental Health shall require counties to use available state and matching funds for the client target population as defined in Section 5600.3 to develop a comprehensive array of services as defined in Sections 5600.6 and 5600.7.

(Added by Stats.1996, c. 153 (S.B.659), § 2.)

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

§ 5806. Service standards

The State Department of Mental Health shall establish service standards that ensure that members of the target population are identified, and services provided to assist them to live independently, work, and reach their potential as productive citizens. The department shall provide annual oversight of grants issued pursuant to this part for compliance with these standards. These standards shall include, but are not limited to, all of the following:

(a) A service planning and delivery process that is target population based and includes the following:

(1) Determination of the numbers of clients to be served and the programs and services that will be provided to meet their needs. The local director of mental health shall consult with the sheriff, the police chief, the probation officer, the mental health board, contract agencies, and family, client, ethnic and citizen constituency groups as determined by the director.

(2) Plans for services, including outreach to families whose severely mentally ill adult is living with them, design of mental health services, coordination and access to medications, psychiatric and psychological services, substance abuse services, supportive housing or other housing assistance, vocational rehabilitation, and veterans'

services. Plans shall also contain evaluation strategies, that shall consider cultural, linguistic, gender, age, and special needs of minorities in the target populations. Provision shall be made for staff with the cultural background and linguistic skills necessary to remove barriers to mental health services due to limited–English–speaking ability and cultural differences. Recipients of outreach services may include families, the public, primary care physicians, and others who are likely to come into contact with individuals who may be suffering from an untreated severe mental illness who would be likely to become homeless if the illness continued to be untreated for a substantial period of time. Outreach to adults may include adults voluntarily or involuntarily hospitalized as a result of a severe mental illness.

(3) Provisions for services to meet the needs of target population clients who are physically disabled.

(4) Provision for services to meet the special needs of older adults.

(5) Provision for family support and consultation services, parenting support and consultation services, and peer support or self–help group support, where appropriate for the individual.

(6) Provision for services to be client–directed and that employ psychosocial rehabilitation and recovery principles.

(7) Provision for psychiatric and psychological services that are integrated with other services and for psychiatric and psychological collaboration in overall service planning.

(8) Provision for services specifically directed to seriously mentally ill young adults 25 years of age or younger who are homeless or at significant risk of becoming homeless. These provisions may include continuation of services that would still be received through other funds had eligibility not been terminated due to age.

(9) Services reflecting special needs of women from diverse cultural backgrounds, including supportive housing that accepts children, personal services coordinator therapeutic treatment, and substance treatment programs that address gender specific trauma and abuse in the lives of persons with mental illness, and vocational rehabilitation programs that offer job training programs free of gender bias and sensitive to the needs of women.

(10) Provision for housing for clients that is immediate, transitional, permanent, or all of these.

(11) Provision for clients who have been suffering from an untreated severe mental illness for less than one year, and who do not require the full range of services but are at risk of becoming homeless unless a comprehensive individual and family support services plan is implemented. These clients shall be served in a manner that is designed to meet their needs.

(b) Each client shall have a clearly designated mental health personal services coordinator who may be part of a multidisciplinary treatment team who is responsible for providing or assuring needed services. Responsibilities include complete assessment of the client's needs, development of the client's personal services plan, linkage with all appropriate community services, monitoring of the quality and follow through of services, and necessary advocacy to ensure each client receives those services which are agreed to in the personal services plan. Each client shall participate in the development of his or her personal services plan, and responsible staff shall consult with the designated conservator, if one has been appointed, and, with the consent of the client, consult with the family and other significant persons as appropriate.

(c) The individual personal services plan shall ensure that members of the target population involved in the system of care receive age, gender, and culturally appropriate services, to the extent feasible, that are designed to enable recipients to:

(1) Live in the most independent, least restrictive housing feasible in the local community, and for clients with children, to live in a supportive housing environment that strives for reunification with their children or assists clients in maintaining custody of their children as is appropriate.

(2) Engage in the highest level of work or productive activity appropriate to their abilities and experience.

(3) Create and maintain a support system consisting of friends, family, and participation in community activities.

(4) Access an appropriate level of academic education or vocational training.

(5) Obtain an adequate income.

(6) Self–manage their illness and exert as much control as possible over both the day–to–day and long–term decisions which affect their lives.

(7) Access necessary physical health care and maintain the best possible physical health.

(8) Reduce or eliminate serious antisocial or criminal behavior and thereby reduce or eliminate their contact with the criminal justice system.

(9) Reduce or eliminate the distress caused by the symptoms of mental illness.

(10) Have freedom from dangerous addictive substances.

(d) The individual personal services plan shall describe the service array that meets the requirements of subdivision (c), and to the extent applicable to the individual, the requirements of subdivision (a).

(Added by Stats.1996, c. 153 (S.B.659), § 2. Amended by Stats.1999, c. 617 (A.B.34), § 3, eff. Oct. 10, 1999; Stats.2000, c. 518 (A.B.2034), § 2, eff. Sept. 19, 2000; Stats.2001, c. 454 (A.B.334), § 2; Stats.2003, c. 578 (A.B.1475), § 5.)

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

§ 5807. Interagency collaboration; development; activities

(a) The State Department of Mental Health shall require counties which receive funding to develop interagency collaboration with shared responsibilities for services under this part and achievement of the client and cost outcome goals and interagency collaboration goals specified.

(b) Collaborative activities shall include:

(1) Identification of those agencies that have a significant joint responsibility for the target population and ensuring collaboration on planning for services to that population.

(2) Identification of gaps in services to members of the target population, development of policies to assure service effectiveness and continuity, and setting priorities for interagency services.

(3) Implementation of public and private collaborative programs whenever possible to better serve the target population.

(4) Provision of interagency case management services to coordinate resources to target population members who are using the services of more than one agency.

(Added by Stats.1996, c. 153 (S.B.659), § 2.)

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

§ 5808. Reimbursement; sources

In order to reduce the state and county cost of a mental health system of care, participating counties shall collect reimbursement for services from clients which shall be the same as patient fees established pursuant to Section 5710, fees paid by private or public third–party payers, federal financial participation for medicaid or Medicare services, and other financial sources when available.

(Added by Stats.1996, c. 153 (S.B.659), § 2.)

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

§ 5809. Client and cost outcome and interagency collaboration goals

The State Department of Mental Health shall continue to work with participating counties and other interested parties to refine and establish client and cost outcome and interagency collaboration goals including the expected level of attainment with participating system of care counties. These outcome measures should include specific objectives addressing the following goals:

(a) Client benefit outcomes.

(b) Client and family member satisfaction.

(c) System of care access.

(d) Cost savings, cost avoidance, and cost–effectiveness outcomes that measure short–term or long–term cost savings and cost avoidance achieved in public sector expenditures to the target population.

(Added by Stats.1996, c. 153 (S.B.659), § 2.)

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

Article 3 STATE DEPARTMENT OF MENTAL HEALTH REQUIREMENTS

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

§ 5810. County contracts

The State Department of Mental Health may contract with counties whose programs have been approved by the department and selected in accordance with Article 2 (commencing with Section 5803). A county may request to participate under this part each year according to the terms set forth in Section 5800 for the purpose of establishing a three–year implementation plan. The contract shall be negotiated on a yearly basis, based on the scope of work plan for each implementation phase.

(Added by Stats.1996, c. 153 (S.B.659), § 2.)

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

§ 5811. Assistance provided by state department of mental health

The State Department of Mental Health shall provide participating counties all of the following:

(a) Request for proposals, application guidelines, and format, and coordination and oversight of the selection process as described in Article 2 (commencing with Section 5803).

(b) Contracts with each state funded county stipulating the approved budget, performance outcomes, and scope of work.

(c) Training, consultation, and technical assistance for county applicants. This training, consultation, and technical assistance shall include:

(1) Efforts to ensure that all of the different programs are operating as well as they can.

(2) Information on which programs are having particular success in particular areas so that they can be replicated in other counties.

(3) Technical assistance to counties in their first two years of participation to ensure quality and cost–effective service.

(Added by Stats.1996, c. 153 (S.B.659), § 2. Amended by Stats.2000, c. 518 (A.B.2034), § 3, eff. Sept. 19, 2000; Stats.2001, c. 454 (A.B.334), § 3.)

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

§ 5811.2. Mental health care providers with geriatric training and experience to oversee, monitor and provide advice to participating counties

The department is encouraged to provide a mental health care provider with training and experience in geriatrics to oversee, monitor, and provide advice to participating counties regarding services for older adults under the counties' mental health system of care developed pursuant to this part.

(Added by Stats.2001, c. 677 (A.B.590), § 1.)

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

Article 4 FINANCIAL PARTICIPATION

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

§ 5813. Voluntary nature of participation

County participation under this part shall be voluntary.

(Added by Stats.1996, c. 153 (S.B.659), § 2.)

IMPLEMENTATION

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

§ 5813.5. Distribution of funds; services to adults and seniors; funding; planning for services

Subject to the availability of funds from the Mental Health Services Fund, the State Department of Mental Health shall distribute funds for the provision of services under Sections 5801, 5802 and 5806 to county mental health programs. Services shall be available to adults and seniors with severe illnesses who meet the eligibility criteria in subdivisions (b) and (c) of Section 5600.3 of the Welfare and Institutions Code. For purposes of this act, seniors means older adult persons identified in Part 3 (commencing with Section 5800) of this division.

(a) Funding shall be provided at sufficient levels to ensure that counties can provide each adult and senior served pursuant to this part with the medically necessary mental health services, medications and supportive services set forth in the applicable treatment plan.

(b) The funding shall only cover the portions of those costs of services that cannot be paid for with other funds including other mental health funds, public and private insurance, and other local, state and federal funds.

(c) Each county mental health programs plan shall provide for services in accordance with the system of care for adults and seniors who meet the eligibility criteria in subdivisions (b) and (c) of Section 5600.3.

(d) Planning for services shall be consistent with the philosophy, principles, and practices of the Recovery Vision for mental health consumers:

(1) To promote concepts key to the recovery for individuals who have mental illness: hope, personal empowerment, respect, social connections, self– responsibility, and self–determination.

(2) To promote consumer–operated services as a way to support recovery.

(3) To reflect the cultural, ethnic and racial diversity of mental health consumers.

(4) To plan for each consumer's individual needs.

(e) The plan for each county mental health program shall indicate, subject to the availability of funds as determined by Part 4.5 (commencing with Section 5890) of this division, and other funds available for mental health services, adults and seniors with a severe mental illness being served by this program are either receiving services from this program or have a mental illness that is not sufficiently severe to require the level of services required of this program.

(f) Each county plan and annual update pursuant to Section 5847 shall consider ways to provide services similar to those established pursuant to the Mentally Ill Offender Crime Reduction Grant Program. Funds shall not be used to pay for persons incarcerated in state prison or parolees from state prisons.

(g) The department shall contract for services with county mental health programs pursuant to Section 5897. After the effective date of this section the term grants referred to in Sections 5814 and 5814.5 shall refer to such contracts.

(Added by Initiative Measure (Prop. 63, § 7, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

§ 5814. Contingent implementation; funds availability; grant awards; demonstration programs; law governing contracts; local matching funds

(a)(1) This part shall be implemented only to the extent that funds are appropriated for purposes of this part. To the extent that funds are made available, the first priority shall go to maintain funding for the existing programs that meet adult system of care contract goals. The next priority for funding shall be given to counties with a high incidence of persons who are severely mentally ill and homeless or at risk of homelessness, and meet the criteria developed pursuant to paragraphs (3) and (4).

(2) The director shall establish a methodology for awarding grants under this part consistent with the legislative intent expressed in Section 5802, and in consultation with the advisory committee established in this subdivision.

(3)(A) The director shall establish an advisory committee for the purpose of providing advice regarding the development of criteria for the award of grants, and the identification of specific performance measures for evaluating the effectiveness of grants. The committee shall review evaluation reports and make findings on evidence–based best practices and recommendations for grant conditions. At not less than one meeting annually, the advisory committee shall provide to the director written comments on the performance of each of the county programs. Upon request by the department, each participating county that is the subject of a comment shall provide a written response to the comment. The department shall comment on each of these responses at a subsequent meeting.

(B) The committee shall include, but not be limited to, representatives from state, county, and community veterans' services and disabled veterans outreach programs, supportive housing and other housing assistance programs, law enforcement, county mental health and private providers of local mental health services and mental health outreach services, the Board of Corrections, the State Department of Alcohol and Drug Programs, local substance abuse services providers, the Department of Rehabilitation, providers of local employment services, the State Department of Social Services, the Department of Housing and Community Development, a service provider to transition youth, the United Advocates for Children of California, the California Mental Health Advocates for Children and Youth, the Mental Health Association of California, the California Alliance for the Mentally Ill, the California Network of Mental Health Clients, the Mental Health Planning Council, and other appropriate entities.

(4) The criteria for the award of grants shall include, but not be limited to, all of the following:

(A) A description of a comprehensive strategic plan for providing outreach, prevention, intervention, and evaluation in a cost appropriate manner corresponding to the criteria specified in subdivision (c).

(B) A description of the local population to be served, ability to administer an effective service program, and the degree to which local agencies and advocates will support and collaborate with program efforts.

(C) A description of efforts to maximize the use of other state, federal, and local funds or services that can support and enhance the effectiveness of these programs.

(5) In order to reduce the cost of providing supportive housing for clients, counties that receive a grant pursuant to this part after January 1, 2004, shall enter into contracts with sponsors of supportive housing projects to the greatest extent possible. Participating counties are encouraged to commit a portion of their grants to rental assistance for a specified number of housing units in exchange for the counties' clients having the right of first refusal to rent the assisted units.

(b) In each year in which additional funding is provided by the annual Budget Act the department shall establish programs that offer individual counties sufficient funds to comprehensively serve severely mentally ill adults who are homeless, recently released from a county jail or the state prison, or others who are untreated, unstable, and at significant risk of incarceration or homelessness unless treatment is provided to them and who are severely mentally ill adults. For purposes of this subdivision, "severely mentally ill adults" are those individuals described in subdivision (b) of Section 5600.3. In consultation with the advisory committee established pursuant to paragraph (3) of subdivision (a), the department shall report to the Legislature on or before May 1 of each year in which additional funding is provided, and shall evaluate, at a minimum, the effectiveness of the strategies in providing successful outreach and reducing homelessness, involvement with local law enforcement, and other measures identified by the department. The evaluation shall include for each program funded in the current fiscal year as much of the following as available information permits:

(1) The number of persons served, and of those, the number who receive extensive community mental health services.

(2) The number of persons who are able to maintain housing, including the type of housing and whether it is emergency, transitional, or permanent housing, as defined by the department.

(3)(A) The amount of grant funding spent on each type of housing.

(B) Other local, state, or federal funds or programs used to house clients.

(4) The number of persons with contacts with local law enforcement and the extent to which local and state incarceration has been reduced or avoided.

(5) The number of persons participating in employment service programs including competitive employment.

(6) The number of persons contacted in outreach efforts who appear to be severely mentally ill, as described in Section 5600.3, who have refused treatment after completion of all applicable outreach measures.

(7) The amount of hospitalization that has been reduced or avoided.

(8) The extent to which veterans identified through these programs' outreach are receiving federally funded veterans' services for which they are eligible.

(9) The extent to which programs funded for three or more years are making a measurable and significant difference on the street, in hospitals, and in jails, as compared to other counties or as compared to those counties in previous years.

(10) For those who have been enrolled in this program for at least two years and who were enrolled in Medi–Cal prior to, and at the time they were enrolled in, this program, a comparison of their Medi–Cal hospitalizations and other Medi–Cal costs for the two years prior to enrollment and the two years after enrollment in this program.

(11) The number of persons served who were and were not receiving Medi–Cal benefits in the 12–month period prior to enrollment and, to the extent possible, the number of emergency room visits and other medical costs for those not enrolled in Medi–Cal in the prior 12–month period.

(c) To the extent that state savings associated with providing

integrated services for the mentally ill are quantified, it is the intent of the Legislature to capture those savings in order to provide integrated services to additional adults.

(d) Each project shall include outreach and service grants in accordance with a contract between the state and approved counties that reflects the number of anticipated contacts with people who are homeless or at risk of homelessness, and the number of those who are severely mentally ill and who are likely to be successfully referred for treatment and will remain in treatment as necessary.

(e) All counties that receive funding shall be subject to specific terms and conditions of oversight and training which shall be developed by the department, in consultation with the advisory committee.

(f)(1) As used in this part, "receiving extensive mental health services" means having a personal services coordinator, as described in subdivision (b) of Section 5806, and having an individual personal service plan, as described in subdivision (c) of Section 5806.

(2) The funding provided pursuant to this part shall be sufficient to provide mental health services, medically necessary medications to treat severe mental illnesses, alcohol and drug services, transportation, supportive housing and other housing assistance, vocational rehabilitation and supported employment services, money management assistance for accessing other health care and obtaining federal income and housing support, accessing veterans' services, stipends, and other incentives to attract and retain sufficient numbers of qualified professionals as necessary to provide the necessary levels of these services. These grants shall, however, pay for only that portion of the costs of those services not otherwise provided by federal funds or other state funds.

(3) Methods used by counties to contract for services pursuant to paragraph (2) shall promote prompt and flexible use of funds, consistent with the scope of services for which the county has contracted with each provider.

(g) Contracts awarded pursuant to this part shall be exempt from the Public Contract Code and the state administrative manual and shall not be subject to the approval of the Department of General Services.

(h) Notwithstanding any other provision of law, funds awarded to counties pursuant to this part and Part 4 (commencing with Section 5850) shall not require a local match in funds.

(Added by Stats.1996, c. 153 (S.B.659), § 2. Amended by Stats.1999, c. 617 (A.B.34), § 4, eff. Oct. 10, 1999; Stats.2000, c. 518 (A.B.2034), § 4, eff. Sept. 19, 2000; Stats.2001, c. 454 (A.B.334), § 4; Stats.2002, c. 337 (A.B.2057), § 2; Stats.2003, c. 578 (A.B.1475), § 6.)

§ 5814.5. Appropriations schedule; county eligibility

(a)(1) In any year in which funds are appropriated for this purpose through the annual Budget Act, counties funded under this part in the 1999–2000 fiscal year are eligible for funding to continue their programs if they have successfully demonstrated the effectiveness of their grants received in that year and to expand their programs if they also demonstrate significant continued unmet need and capacity for expansion without compromising quality or effectiveness of care.

(2) In any year in which funds are appropriated for this purpose through the annual Budget Act, other counties or portions of counties, or cities that operate independent public mental health programs pursuant to Section 5615 of the Welfare and Institutions Code, are eligible for funding to establish programs if a county or eligible city demonstrates that it can provide comprehensive services, as set forth in this part, to a substantial number of adults who are severely mentally ill, as defined in Section 5600.3, and are homeless or recently released from the county jail or who are untreated, unstable, and at significant risk of incarceration or homelessness unless treatment is provided.

(b)(1) Counties eligible for funding pursuant to subdivision (a) shall be those that have or can develop integrated adult service programs that meet the criteria for an adult system of care, as set forth in Section 5806, and that have, or can develop, integrated forensic programs with similar characteristics for parolees and those recently released from county jail who meet the target population requirements of Section 5600.3 and are at risk of incarceration unless the services are provided. Before a city or county submits a proposal to the state to establish or expand a program, the proposal shall be reviewed by a local advisory committee or mental health board, which may be an existing body, that includes clients, family members, private providers of services, and other relevant stakeholders. Local enrollment for integrated adult service programs and for integrated forensic programs funded pursuant to subdivision (a) shall adhere to all conditions set forth by the department, including the total number of clients to be enrolled, the providers to which clients are enrolled and the maximum cost for each provider, the maximum number of clients to be served at any one time, the outreach and screening process used to identify enrollees, and the total cost of the program. Local enrollment of each individual for integrated forensic programs shall be subject to the approval of the county mental health director or his or her designee.

(2) Each county shall ensure that funds provided by these grants are used to expand existing integrated service programs that meet the criteria of the adult system of care to provide new services in accordance with the purpose for which they were appropriated and allocated, and that none of these funds shall be used to supplant existing services to severely mentally ill adults. In order to ensure that this requirement is met, the department shall develop methods and contractual requirements, as it determines necessary. At a minimum, these assurances shall include that state and federal requirements regarding tracking of funds are met and that patient records are maintained in a manner that protects privacy and confidentiality, as required under federal and state law.

(c) Each county selected to receive a grant pursuant to this section shall provide data as the department may require, that demonstrates the outcomes of the adult system of care programs, shall specify the additional numbers of severely mentally ill adults to whom they will provide comprehensive services for each million dollars of additional funding that may be awarded through either an integrated adult service grant or an integrated forensic grant, and shall agree to provide services in accordance with Section 5806. Each county's plan shall identify and include sufficient funding to provide housing for the individuals to be served, and shall ensure that any hospitalization of individuals participating in the program are coordinated with the provision of other mental health services provided under the program.

(Added by Stats.1999, c. 617 (A.B.34), § 5, eff. Oct. 10, 1999. Amended by Stats.2000, c. 518 (A.B.2034), § 5, eff. Sept. 19, 2000; Stats.2001, c. 454 (A.B.334), § 5.)

Implementation

Implementation of Part 3 is subject to appropriation of funding under Welfare and Institutions Code § 5814.

Part 3.1 HUMAN RESOURCES, EDUCATION, AND TRAINING PROGRAMS

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

§ 5820. Intent of part; program to remedy shortage of qualified individuals to address severe mental illnesses; county needs assessment; statewide need and five–year plans

(a) It is the intent of this part to establish a program with dedicated funding to remedy the shortage of qualified individuals to provide services to address severe mental illnesses.

(b) Each county mental health program shall submit to the department a needs assessment identifying its shortages in each professional and other occupational category in order to increase the

supply of professional staff and other staff that county mental health programs anticipate they will require in order to provide the increase in services projected to serve additional individuals and families pursuant to Part 3(commencing with Section 5800), Part 3.2 (commencing with Section 5830), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division. For purposes of this part, employment in California's public mental health system includes employment in private organizations providing publicly funded mental health services.

(c) The department shall identify the total statewide needs for each professional and other occupational category and develop a five– year education and training development plan.

(d) Development of the first five–year plan shall commence upon enactment of the initiative. Subsequent plans shall be adopted every five years.

(e) Each five–year plan shall be reviewed and approved by the California Mental Health Planning Council.

(Added by Initiative Measure (Prop. 63, § 8, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

§ 5821. California Mental Health Planning Council; education and training policy development and oversight; staffing

(a) The California Mental Health Planning Council shall advise the State Department of Mental Health on education and training policy development and provide oversight for the department's education and training plan development.

(b) The State Department of Mental Health shall work with the California Mental Health Planning Council so that council staff is increased appropriately to fulfill its duties required by Sections 5820 and 5821.

(Added by Initiative Measure (Prop. 63, § 8, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

§ 5822. Five–year plans; occupational shortages; forgiveness and scholarship programs; stipend program; regional partnership programs; recruitment of students

The State Department of Mental Health shall include in the five–year plan:

(a) Expansion plans for the capacity of postsecondary education to meet the needs of identified mental health occupational shortages.

(b) Expansion plans for the forgiveness and scholarship programs offered in return for a commitment to employment in California's public mental health system and make loan forgiveness programs available to current employees of the mental health system who want to obtain Associate of Arts, Bachelor of Arts, master's degrees, or doctoral degrees.

(c) Creation of a stipend program modeled after the federal Title IV–E program for persons enrolled in academic institutions who want to be employed in the mental health system.

(d) Establishment of regional partnerships among the mental health system and the educational system to expand out reach to multicultural communities, increase the diversity of the mental health workforce, to reduce the stigma associated with mental illness, and to promote the use of web–based technologies, and distance learning techniques.

(e) Strategies to recruit high school students for mental health occupations, increasing the prevalence of mental health occupations in high school career development programs such as health science academies, adult schools, and regional occupation centers and programs, and increasing the number of human service academies.

(f) Curriculum to train and retrain staff to provide services in accordance with the provisions and principles of Part 3 (commencing with Section 5800), Part 3.2 (commencing with Section 5830), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division.

(g) Promotion of the employment of mental health consumers and family members in the mental health system.

(h) Promotion of the meaningful inclusion of mental health consumers and family members and incorporating their viewpoint and experiences in the training and education programs in subdivisions (a)through (f).

(i) Promotion of the inclusion of cultural competency in the training and education programs in subdivisions (a) through (f).

(Added by Initiative Measure (Prop. 63, § 8, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

Part 3.2 INNOVATIVE PROGRAMS

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

§ 5830. Development of innovative program plans; purposes; funding

County mental health programs shall develop plans for innovative programs to be funded pursuant to paragraph (6) of subdivision (a) of Section 5892.

(a) The innovative programs shall have the following purposes:

(1) To increase access to underserved groups.

(2) To increase the quality of services, including better outcomes.

(3) To promote interagency collaboration.

(4) To increase access to services.

(b) County mental health programs shall receive funds for their innovation programs upon approval by the Mental Health Services Oversight and Accountability Commission.

(Added by Initiative Measure (Prop. 63, § 9, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

Part 3.6 PREVENTION AND EARLY INTERVENTION PROGRAMS

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

§ 5840. Program establishment; components; mental health services provided; preventive strategies; future revision of program elements

(a) The State Department of Mental Health shall establish a program designed to prevent mental illnesses from becoming severe and disabling. The program shall emphasize improving timely access to services for underserved populations.

(b) The program shall include the following components:

(1) Outreach to families, employers, primary care health care providers, and others to recognize the early signs of potentially severe and disabling mental illnesses.

(2) Access and linkage to medically necessary care provided by county mental health programs for children with severe mental illness, as defined in Section 5600.3, and for adults and seniors with severe mental illness, as defined in Section 5600.3, as early in the onset of these conditions as practicable.

(3) Reduction in stigma associated with either being diagnosed with a mental illness or seeking mental health services.

(4) Reduction in discrimination against people with mental illness.

(c) The program shall include mental health services similar to those provided under other programs effective in preventing mental illnesses from becoming severe, and shall also include components similar to programs that have been successful in reducing the duration of untreated severe mental illnesses and assisting people in quickly regaining productive lives.

(d) The program shall emphasize strategies to reduce the following negative outcomes that may result from untreated mental illness:

(1) Suicide.

(2) Incarcerations.

(3) School failure or dropout.

(4) Unemployment.

(5) Prolonged suffering.

(6) Homelessness.

(7) Removal of children from their homes.

(e) In consultation with mental health stakeholders, the department shall revise the program elements in Section 5840 applicable to all county mental health programs in future years to reflect what is learned about the most effective prevention and intervention programs for children, adults, and seniors.

(Added by Initiative Measure (Prop. 63, § 4, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

§ 5840.2. County mental health programs; contracts

(a) [1]The department shall contract for the provision of services pursuant to this part with each county mental health program in the manner set forth in Section 5897.

(Added by Initiative Measure (Prop. 63, § 4, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

[1]No (b) in Initiative Measure.

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

Part 3.7 OVERSIGHT AND ACCOUNTABILITY

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

§ 5845. Establishment of Mental Health Services Oversight and Accountability Commission; member compensation; term; authority

(a) The Mental Health Services Oversight and Accountability Commission is hereby established to oversee Part 3 (commencing with Section 5800), the Adult and Older Adult Mental Health System of Care Act; Part 3.1 (commencing with Section 5820), Human Resources, Education, and Training Programs; Part 3.2 (commencing with Section 5830), Innovative Programs; Part 3.6 (commencing with Section 5840), Prevention and Early Intervention Programs; and Part 4 (commencing with Section 5850), the Children's Mental Health Services Act. The commission shall replace the advisory committee established pursuant to Section 5814. The commission shall consist of 16 voting members as follows:

(1) The Attorney General or his or her designee.

(2) The Superintendent of Public Instruction or his or her designee.

(3) The Chairperson of the Senate Health and Human Services Committee or another member of the Senate selected by the President pro Tempore of the Senate.

(4) The Chairperson of the Assembly Health Committee or another member of the Assembly selected by the Speaker of the Assembly.

(5) Two persons with a severe mental illness, a family member of an adult or senior with a severe mental illness, a family member of a child who has or has had a severe mental illness, a physician specializing in alcohol and drug treatment, a mental health professional, a county sheriff, a superintendent of a school district, a representative of a labor organization, a representative of an employer with less than 500 employees and a representative of an employer with more than 500 employees, and a representative of a health care services plan or insurer, all appointed by the Governor. In making appointments, the Governor shall seek individuals who have had personal or family experience with mental illness.

(b) Members shall serve without compensation, but shall be reimbursed for all actual and necessary expenses incurred in the performance of their duties.

(c) The term of each member shall be three years, to be staggered so that approximately one–third of the appointments expire in each year.

(d) In carrying out its duties and responsibilities, the commission may do all of the following:

(1) Meet at least once each quarter at any time and location convenient to the public as it may deem appropriate. All meetings of the commission shall be open to the public.

(2) Within the limit of funds allocated for these purposes, pursuant to the laws and regulations governing state civil service, employ staff, including any clerical, legal, and technical assistance as may appear necessary.

(3) Establish technical advisory committees such as a committee of consumers and family members.

(4) Employ all other appropriate strategies necessary or convenient to enable it to fully and adequately perform its duties and exercise the powers expressly granted, notwithstanding any authority expressly granted to any officer or employee of state government.

(5) Develop strategies to overcome stigma and accomplish all other objectives of Part 3.2 (commencing with Section 5830), 3.6 (commencing with Section 5840), and the other provisions of the act establishing this commission.

(6) At any time, advise the Governor or the Legislature regarding actions the state may take to improve care and services for people with mental illness.

(7) If the commission identifies a critical issue related to the performance of a county mental health program, it may refer the issue to the State Department of Mental Health pursuant to Section 5655.

(Added by Initiative Measure (Prop. 63, § 10, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

§ 5846. Annual review and approval of county mental health program expenditures; technical assistance

(a) The commission shall annually review and approve each county mental health program for expenditures pursuant to Part 3.2 (commencing with Section 5830), for innovative programs and Part 3.6 (commencing with Section 5840), for prevention and early intervention.

(b) The department may provide technical assistance to any county mental health plan as needed to address concerns or recommendations of the commission or when local programs could benefit from technical assistance for improvement of their plans submitted pursuant to Section 5847.

(c) The commission shall ensure that the perspective and participation of members and others suffering from severe mental illness and their family members is a significant factor in all of its decisions and recommendations.

(Added by Initiative Measure (Prop. 63, § 10, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

§ 5847. Integrated Plans for Prevention, Innovation and System of Care Services[1]

(a) Each county mental health program shall prepare and submit a three– year plan which shall be updated at least annually and approved by the department after review and comment by the Mental Health Services Oversight and Accountability Commission. The plan and update shall include all of the following:

(1) A program for prevention and early intervention in accordance with Part 3.6 (commencing with Section 5840) of this division.

(2) A program for services to children in accordance with Part 4 (commencing with Section 5850) of this division, to include a program pursuant to Chapter 4 (commencing with Section 18250) of Part 6 of Division 9 or provide substantial evidence that it is not feasible to establish a wrap around program in that county.

(3) A program for services to adults and seniors in accordance with Part 3 (commencing with Section 5800) of this division.

(4) A program for innovations in accordance with Part 3.2 (commencing with Section 5830) of this division.

(5) A program for technological needs and capital facilities needed to provide services pursuant to Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division. All plans for proposed facilities with restrictive settings shall demonstrate that the needs of the people to be served cannot be met in a less restrictive or more integrated setting.

(6) Identification of shortages in personnel to provide services pursuant to the above programs and the additional assistance needed from the education and training programs established pursuant to Part 3.1 (commencing with Section 5820) of this division.

(7) Establishment and maintenance of a prudent reserve to ensure the county program will continue to be able to serve children, adults and seniors that it is currently serving pursuant to Part 3 (commencing with Section 5800) and Part 4 (commencing with Section 5850) of this division, during years in which revenues for the Mental Health Services Fund are below recent averages adjusted by changes in the state population and the California Consumer Price Index.

(b) The department's review and approval of the programs specified in paragraphs (1) and (4) of subdivision (a) shall be limited to ensuring the consistency of such programs with the other portions of the plan and providing review and comment to the Mental Health Services Oversight and Accountability Commission.

(c) The programs established pursuant to paragraphs (2) and (3) of subdivision (a) shall include services to address the needs of transition age youth ages 16 to 25.

(d) Each year the State Department of Mental Health shall inform counties of the amounts of funds available for services to children pursuant to Part 4 (commencing with Section 5850) of this division, and to adults and seniors pursuant to Part 3 (commencing with Section 5800) of this division. Each county mental health program shall prepare expenditure plans pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division, and updates to the plans developed pursuant to this section. Each expenditure update shall indicate the number of children, adults and seniors to be served pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division, and the cost per person. The expenditure update shall include utilization of unspent funds allocated in the previous year and the proposed expenditure for the same purpose.

(e) The department shall evaluate each proposed expenditure plan and determine the extent to which each county has the capacity to serve the proposed number of children, adults and seniors pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division; the extent to which there is an unmet need to serve that number of children, adults and seniors; and determine the amount of available funds; and provide each county with an allocation from the funds available. The department shall give greater weight for a county or a population which has been significantly underserved for several years.

(f) A county mental health program shall include an allocation of funds from a reserve established pursuant to paragraph (6) of subdivision (a) for services pursuant to paragraphs (2) and (3) of subdivision (a) in years in which the allocation of funds for services pursuant to subdivision (c) are not adequate to continue to serve the same number of individuals as the county had been serving in the previous fiscal year.

(Added by Initiative Measure (Prop. 63, § 10, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

[1]Section caption supplied by Prop. 63.

§ 5848. Development of prevention and early intervention plans with local stakeholders; public hearing on draft plan; content requirements; review of performance

(a) Each plan and update shall be developed with local stakeholders including adults and seniors with severe mental illness, families of children, adults and seniors with severe mental illness, providers of services, law enforcement agencies, education, sociaL services agencies and other important interests. A draft plan and update shall be prepared and circulated for review and comment for at least 30 days to representatives of stakeholder interests and any interested party who has requested a copy of such plans.

(b) The mental health board established pursuant to Section 5604 shall conduct a public hearing on the draft plan and annual updates at the close of the 30–day comment period required by subdivision (a). Each adopted plan and update shall include any substantive written recommendations for revisions. The adopted plan or update shall summarize and analyze the recommended revisions. The mental health board shall review the adopted plan or update and make recommendations to the county mental health department for revisions.

(c) The department shall establish requirements for the content of the plans. The plans shall include reports on the achievement of performance outcomes for services pursuant to Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division funded by the Mental Health Services Fund and established by the department.

(d) Mental health services provided pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division, shall be included in the review of program performance by the California Mental Health Planning Council required by paragraph (2) of subdivision (c) of Section 5772 and in the local mental health board's review and comment on the performance outcome data required by paragraph (7) of subdivision (a) of Section 5604.2.

(Added by Initiative Measure (Prop. 63, § 10, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

Part 4 THE CHILDREN'S MENTAL HEALTH SERVICES ACT

Chapter 1 INTERAGENCY SYSTEM OF CARE

Article 1 LEGISLATIVE FINDINGS AND INTENT

§ 5850. Short title

This part shall be known and may be cited as the Children's Mental Health Services Act.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

§ 5851. Legislative findings, declarations and intent

(a) The Legislature finds and declares that there is no

comprehensive county interagency system throughout California for the delivery of mental health services to seriously emotionally and behaviorally disturbed children and their families. Specific problems to be addressed include the following:

(1) The population of children which should receive highest priority for services has not been defined.

(2) Clear and objective client outcome goals for children receiving services have not been specified.

(3) Although seriously emotionally and behaviorally disturbed children usually have multiple disabilities, the many different state and county agencies, particularly education, social services, juvenile justice, health, and mental health agencies, with shared responsibility for these individuals, do not always collaborate to develop and deliver integrated and cost–effective programs.

(4) A range of community–based treatment, case management, and interagency system components required by children with serious emotional disturbances has not been identified and implemented.

(5) Service delivery standards that ensure culturally competent care in the most appropriate, least restrictive environment have not been specified and required.

(6) The mental health system lacks accountability and methods to measure progress towards client outcome goals and cost–effectiveness. There are also no requirements for other state and county agencies to collect or share relevant data necessary for the mental health system to conduct this evaluation.

(b) The Legislature further finds and declares that the model developed in Ventura County beginning in the 1984–85 fiscal year through the implementation of Chapter 1474 of the Statutes of 1984 and expanded to the Counties of Santa Cruz, San Mateo, and Riverside in the 1989–90 fiscal year pursuant to Chapter 1361 of the Statutes of 1987, provides a comprehensive, interagency system of care for seriously emotionally and behaviorally disturbed children and their families and has successfully met the performance outcomes required by the Legislature. The Legislature finds that this accountability for outcome is a defining characteristic of a system of care as developed under this part. It finds that the system established in these four counties can be expanded statewide to provide greater benefit to children with serious emotional and behavioral disturbances at a lower cost to the taxpayers. It finds further that substantial savings to the state and these four counties accrue annually, as documented by the independent evaluator provided under this part. Of the amount continuing to be saved by the state in its share of out–of–home placement costs and special education costs for those counties and others currently funded by this part, a portion is hereby reinvested to expand and maintain statewide the system of care for children with serious emotional and behavioral disturbances.

(c) Therefore, using the Ventura County model guidelines, it is the intent of the Legislature to accomplish the following:

(1) To phase in the system of care for children with serious emotional and behavioral problems developed under this part to all counties within the state.

(2) To require that 100 percent of the new funds appropriated under this part be dedicated to the targeted population as defined in Sections 5856 and 5856.2. To this end, it is the intent of the Legislature that families of eligible children be involved in county program planning and design and, in all cases, be involved in the development of individual child treatment plans.

(3) To expand interagency collaboration and shared responsibility for seriously emotionally and behaviorally disturbed children in order to do the following:

(A) Enable children to remain at home with their families whenever possible.

(B) Enable children placed in foster care for their protection to remain with a foster family in their community as long as separation from their natural family is determined necessary by the juvenile court.

(C) Enable special education pupils to attend public school and make academic progress.

(D) Enable juvenile offenders to decrease delinquent behavior.

(E) Enable children requiring out–of–home placement in licensed residential group homes or psychiatric hospitals to receive that care in as close proximity as possible to the child's usual residence.

(F) Separately identify and categorize funding for these services.

(4) To increase accountability by expanding the number of counties with a performance contract that requires measures of client outcome and cost avoidance.

(d) It is the intent of the Legislature that the outcomes prescribed by this section shall be achieved regardless of the cultural or ethnic origin of the seriously emotionally and behaviorally disturbed children and their families.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2. Amended by Stats.1996, c. 1167 (S.B.1667), § 1, eff. Sept. 30, 1996; Stats.2000, c. 520 (S.B.1452), § 1.)

§ 5851.5. System of care county

For the purposes of this part, a "system of care county" means a county which has been approved by the State Department of Mental Health as having the capability to provide child– and family–centered services in a collaborative manner, resulting in quantitative outcome measures.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

Article 2 COUNTY SYSTEMS OF CARE AND THEIR MISSION

§ 5852. Interagency system of care; establishment

There is hereby established an interagency system of care for children with serious emotional and behavioral disturbances that provides comprehensive, coordinated care based on the demonstration project under former Chapter 7 (commencing with Section 5575), as added by Chapter 160 of the Statutes of 1987, and the 1983 State Department of Mental Health planning model for children's services. Each participating county shall adapt the model to local needs and priorities.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

§ 5852.5. Counties awarded funds; review; estimated cost avoidance

The department shall review those counties that have been awarded funds to implement a comprehensive system for the delivery of mental health services to children with serious emotional disturbance and to their families or foster families to determine compliance with either of the following:

(a) The total estimated cost avoidance in all of the following categories shall equal or exceed the applications for funding award moneys:

(1) Group home costs paid by Aid to Families with Dependent Children–Foster Care (AFDC–FC) program.

(2) Children and adolescent state hospital and acute inpatient programs.

(3) Nonpublic school residential placement costs.

(4) Juvenile justice reincarcerations.

(5) Other short– and long–term savings in public funds resulting from the applications for funding award moneys.

(b) If the department determines that the total cost avoidance listed in subdivision (a) does not equal or exceed applications for funding award amounts, the department shall determine that the county that has been awarded funding shall achieve substantial compliance with all of the following goals:

(1) Total cost avoidance in the categories listed in subdivision (a) to exceed 50 percent of the applications for funding award moneys.

(2) A 20–percent reduction in out–of–county ordered placements of juvenile justice wards and social service dependents.

(3) A statistically significant reduction in the rate of recidivism by juvenile offenders.

(4) A 25–percent reduction in the rate of state hospitalization of minors from placements of special education pupils.

(5) A 10–percent reduction in out–of–county nonpublic school residential placements of special education pupils.

(6) Allow at least 50 percent of children at risk of imminent placement served by the intensive in–home crisis treatment programs, which are wholly or partially funded by applications for funding award moneys, to remain at home at least six months.

(7) Statistically significant improvement in school attendance and academic performance of seriously emotionally disturbed special education pupils treated in day treatment programs which are wholly or partially funded by applications for funding award moneys.

(8) Statistically significant increases in services provided in nonclinic settings among agencies.

(9) Increase in ethnic minority and gender access to services proportionate to the percentage of these groups in the county's school–age population.

(Added by Stats.1992, c. 1374 (A.B.14), § 49, eff. Oct. 28, 1992. Amended by Stats.2000, c. 520 (S.B.1452), § 2.)

§ 5853. County participation

County participation under this part shall be voluntary.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

§ 5854. Contracts with counties with approved programs

The State Department of Mental Health may contract with counties whose programs have been approved by the department and selected pursuant to Article 4 (commencing with Section 5857). A county may request to participate under this part each year according to the terms set forth in Section 5705 for the purpose of establishing a three–year program proposal for developing and implementing a children's comprehensive mental health services system. The contract shall be negotiated on a yearly basis, based on the scope of work plan for each implementation phase.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

§ 5855. Development of comprehensive, interagency systems of care; essential values

The department shall adopt as part of its overall mission the development of community–based, comprehensive, interagency systems of care that target seriously emotionally and behaviorally disturbed children separated from their families or at risk of separation from their families, as defined in Section 5856. These comprehensive, interagency systems of care shall seek to provide the highest benefit to children, their families, and the community at the lowest cost to the public sector. Essential values shall be as follows:

(a) Family preservation. Children shall be maintained in their homes with their families whenever possible.

(b) Least restrictive setting. Children shall be placed in the least restrictive and least costly setting appropriate to their needs when out–of–home placement is necessary.

(c) Natural setting. Children benefit most from mental health services in their natural environments, where they live and learn, such as home, school, foster home, or a juvenile detention center.

(d) Interagency collaboration and a coordinated service delivery system. The primary child–serving agencies, such as social services, probation, education, health, and mental health agencies, shall collaborate at the policy, management, and service levels to provide a coordinated, goal–directed system of care for seriously emotionally disturbed children and their families.

(e) Family involvement. Family participation is an integral part of assessment, intervention, and evaluation.

(f) Cultural competence. Service effectiveness is dependent upon both culturally relevant and competent service delivery.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

§ 5855.5. Existing projects; continuation of funding; evaluation measures; annual performance contracts

(a) Projects funded pursuant to Part 4 (commencing with Section 5850) of Division 5, as added by Chapter 89 of the Statutes of 1991, shall continue under the terms of this part.

(b) The department shall negotiate with each participating county to establish appropriate evaluation measures for the county's children's system of care program after the initial three–year implementation funding period as established in Section 5854. The department shall, on an annual basis, negotiate a performance contract with each county electing to continue its children's system of care program. The annual performance contract shall be consistent county to county, and shall include, but not be limited to, a scope of work plan consistent with the provisions of this part and shall contain a budget that has sufficient detail to meet the requirements of the department.

(Formerly § 5856, added by Stats.1992, c. 1229 (A.B.3015), § 2. Renumbered § 5855.5 and amended by Stats.1993, c. 589 (A.B.2211), § 195. Amended by Stats.2000, c. 520 (S.B.1452), § 3.)

Article 3 TARGET CLIENT POPULATION

§ 5856. Seriously emotionally disturbed children

For the purposes of this part, "seriously emotionally disturbed children" means those minors under 18 years of age described in paragraph (2) of subdivision (a) of Section 5600.3.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

§ 5856.2. Eligible children; young children and adolescents in transition

(a) Eligible children shall include seriously disturbed children who meet the requirements of Section 5856 and who are referred by collaborating programs, including wrap–around programs (Chapter 4 (commencing with Section 18250) of Part 6 of Division 9), Family Preservation programs (Part 4.4 (commencing with Section 16600) of Division 9), Juvenile Crime Enforcement and Accountability Challenge Grant programs (Article 18.7 (commencing with Section 749.2) of Chapter 2 of Part 1 of Division 1), programs serving children with dual diagnosis including substance abuse or whose emotional disturbance is related to family substance abuse, and children whose families are enrolled in CalWORKs (Chapter 2 (commencing with Section 11200.5) of Part 3 of Division 9).

(b) Counties shall ensure, within available resources, that programs are designed to serve young children from zero to five years of age, inclusive, their families, and adolescents in transition from 15 to 21 years of age, inclusive.

(Added by Stats.2000, c. 520 (S.B.1452), § 4.)

Article 4 COUNTY SELECTION

§ 5857. Request for applications for funding; submission of applications; review; letters of intent

(a) The State Department of Mental Health shall issue a request for applications for funding for new children's system of care programs to nonparticipating counties in each year that additional funds are provided for statewide expansion pursuant to this part.

(b) Applications shall be submitted to the department by a county mental health department with joint approval of collaborating local agencies including, but not limited to, special education, juvenile court, probation, child protective services agencies, the board of supervisors, and the mental health advisory board.

(c) Program staff from the department shall review all applications for funding for compliance with all requirements of law and the application guidelines established by the department.

(d) The department may accept letters of intent from a county in lieu of an application if moneys are not available to the county, to affirm commitment by the county to participate in the request for applications for funding process when moneys become available. Upon approval of an application by the director, a county shall be

funded for an initial three–year contract period as described in Section 5854 and annually thereafter, consistent with the provisions of this part. If a county is complying with the provisions of this part, the department shall assure that the county receives an annual allocation consistent with departmental guidelines for full funding, as resources are made available.
(Added by Stats.1992, c. 1229 (A.B.3015), § 2. Amended by Stats.1993, c. 589 (A.B.2211), § 196; Stats.1996, c. 1167 (S.B.1667), § 2, eff. Sept. 30, 1996; Stats.2000, c. 520 (S.B.1452), § 5.)

§ 5859. Deficient applications; compliance and approval assistance

If applications are deficient and not ready for approval, department program staff shall provide specific written descriptions of areas of deficiency to counties and provide, to the extent feasible, any requested training, consultation, and technical assistance to assist the applicant county to achieve necessary compliance and department approval.
(Added by Stats.1992, c. 1229 (A.B.3015), § 2. Amended by Stats.2000, c. 520 (S.B.1452), § 6.)

§ 5860. Final selection; use of funds; annual performance contracts

(a) Final selection of county proposals shall be subject to the amount of funding approved for expansion of services under this part.

(b) Counties shall use funds distributed under this part only in support of a mental health system serving seriously emotionally disturbed children in accordance with the principles and program requirements associated with the system of care model described in this part. The State Department of Mental Health shall audit and monitor the use of these funds to ensure that the funds are used solely in support of the children's system of care program and in accordance with the performance contract described in subdivision (c). If county programs receiving children's system of care funding do not comply with program and audit requirements determined by the department, funds shall be redistributed to other counties to implement, expand, or model children's system of care programs.

(c) The department shall enter into annual performance contracts with the selected counties and enter into training and consultation contracts as necessary to fulfill its obligations under this part. These annual performance contracts shall be in addition to the county mental health services performance contracts submitted to the department under Section 5650. Any changes in the staffing patterns or protocols, or both, approved in the original program proposal shall be identified and justified in these annual performance contracts. Annual performance contracts filed by counties operating the program as of January 1, 2001, shall, if approved by the department, serve as the baseline contract for purposes of this subdivision. The contracts shall be exempt from the requirements of the Public Contract Code and the State Administrative Manual and shall be exempt from approval by the Department of General Services.
(Added by Stats.1992, c. 1229 (A.B.3015), § 2. Amended by Stats.1996, c. 1167 (S.B.1667), § 3, eff. Sept. 30, 1996; Stats.2000, c. 520 (S.B.1452), § 7.)

Article 5 COUNTY PROPOSAL COMPONENTS

§ 5861. Submission of proposals

Proposals for a system of care may be submitted for a region by several smaller counties acting jointly, as independent countywide proposals, or proposals to serve a discrete subset of the targeted population in a larger county, such as court dependents, court wards, or special education pupils.
(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

§ 5862. Development of program proposals; components

(a) Each county wishing to participate under this part shall develop a three–year program proposal for phasing in the children's comprehensive mental health services system.

(b) The three–year program proposal shall include all of the following:

(1) The components of the system the county proposes to implement in the first year, which shall include a case management component.

(2) The components of the system the county intends to implement in the second year.

(3) The remaining components of the system the county intends to implement in the third year. All components shall be in place by the end of the third year.

(c) Approval for participation shall be made by the department at the end of the three–year period.
(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

§ 5863. Components of program proposals

In addition to the requirements of Section 5862, each county program proposal shall contain all of the following:

(a) Methods and protocols for the county mental health department to identify and screen the eligible target population children. These protocols shall be developed with collaborative partners and shall ensure that eligible children can be referred from all collaborating agencies.

(b) Measurable system performance goals for client outcome and cost avoidance. Outcomes shall be made available to collaborating partners and used for program improvement.

(c) Methods to achieve interagency collaboration by all publicly funded agencies serving children experiencing emotional disturbances.

(d) Appropriate written interagency protocols and agreements with all other programs in the county that serve similar populations of children. Agreements shall exist with wrap–around programs (Chapter 4 (commencing with Section 18250) of Part 6 of Division 9), Family Preservation programs (Part 4.4 (commencing with Section 16600) of Division 9), Juvenile Crime Enforcement and Accountability Challenge Grant programs (Article 18.7 (commencing with Section 749.2) of Chapter 2 of Part 1 of Division 1), programs serving children with a dual diagnosis including substance abuse or whose emotional disturbance is related to family substance abuse, and programs serving families enrolled in CalWORKs (Chapter 2 (commencing with Section 11200.5) of Part 3 of Division 9).

(e) A description of case management services for the target population. Each county program proposal shall include protocols developed in the county for case management designed to provide assessment, linkage, case planning, monitoring, and client advocacy to facilitate the provision of appropriate services for the child and family in the least restrictive environment as close to home as possible.

(f) Mental health services that enable a child to remain in his or her usual family setting and that offer an appropriate alternative to out–of–home placement.

(g) Methods to conduct joint interagency placement screening of target population children prior to out–of–home placement.

(h) Identification of the number and level of county evaluation staff and the resources necessary to meet requirements established by the State Department of Mental Health to measure client and cost outcome and other system performance measures.

(i) A budget specifying all new and currently funded mental health expenditures provided as part of the proposed system of care. The department shall establish reporting requirements for direct and indirect administrative overhead, to be included in the request for proposals. Weight shall be given to counties with lower administrative overhead costs. In no case shall administrative costs exceed those of existing county mental health programs and services. Expenditures for evaluation staff and resources shall not be considered administrative costs for this purpose.

(j) Any requirements for interagency collaboration, agreements, or

protocols contained in this section shall not diminish requirements for the confidentiality of medical information or information maintained by a county agency or department.
(Added by Stats.1992, c. 1229 (A.B.3015), § 2. Amended by Stats.2000, c. 520 (S.B.1452), § 8.)

§ 5864. Baseline data

Participating counties shall, prior to the submission of their program proposals, develop baseline data on children served by the county in the mental health services system, social services system, the juvenile justice system, and the special education system. Data shall include, but not be limited to, the numbers of children and current expenditures for group homes, nonpublic school placements, and state hospital placements. This baseline data shall be submitted to the department as part of the program proposal.
(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

Article 6 COUNTY SYSTEM OF CARE REQUIREMENTS

§ 5865. Services to be in place upon funding by state

Each county shall have in place, with qualified mental health personnel, all of the following within three years of funding by the state:

(a) A comprehensive, interagency system of care that serves the target population as defined in Section 5856.

(b) A method to screen and identify children in the target population. County mental health staff shall consult with the representatives from special education, social services, and juvenile justice agencies, the mental health advisory board, family advocacy groups, and others as necessary to help identify all of the persons in the target populations, including persons from ethnic minority cultures which may require outreach for identification.

(c) A defined mental health case management system designed to facilitate the outcome goals for children in the target population.

(d) A defined range of mental health services and program standards that involve interagency collaboration and ensure appropriate service delivery in the least restrictive environment with community–based alternatives to out–of–home placement.

(e) A defined mechanism to ensure that services are culturally competent.

(f) A defined mechanism to ensure that services are child–centered and family–focused, with parent participation in planning and delivery of services.

(g) A method to show measurable improvement in individual and family functional status for children enrolled in the system of care.

(h) A method to measure and report cost avoidance and client outcomes for the target population which includes, but is not limited to, state hospital utilization, group home utilization, nonpublic school residential placement, school attendance and performance, and recidivism in the juvenile justice system.

(i) A plan to ensure that system of care services are planned to complement and coordinate with services provided under the federal Early and Periodic Screening, Diagnosis and Treatment services (Section 1396d(a)(4)(B) of Title 42 of the United States Code), including foster children served under Section 5867.5, where those services are medically necessary but children do not meet the requirements of Section 5600.3.

(j) A plan to ensure that system of care services are planned to complement and coordinate with services provided to CalWORKs (Chapter 2 (commencing with Section 11200.5) of Part 3 of Division 9) recipients whose families receive mental health treatment services.

(k) A defined partnership between the children's system of care program and family members of children who have been or are currently being served in the county mental health system. This partnership shall include family member involvement in ongoing discussions and decisions regarding policy development, program administration, service development, and service delivery.
(Added by Stats.1992, c. 1229 (A.B.3015), § 2. Amended by Stats.2000, c. 520 (S.B.1452), § 9.)

§ 5865.1. Systems of care serving children 15 to 21 years old; required structures and services

When a county system of care serves children 15 to 21 years of age, the following structures and services shall, to the extent possible, be available, and if not available, the county plan shall identify a timeline for the development of these services:

(a) Collaborative agreements with schools, community colleges, independent living programs, child welfare services, job training agencies, CalWORKs providers, regional center services, and transportation and recreation services as needed.

(b) Collaborative teams involving the youth and two or more agencies to develop a transition plan that identifies needs and resources required to successfully transition to independent living as an adult.

(c) Service plans that identify the needs of the youth in the areas of employment, job training, health care, education, counseling, socialization, housing, and independent living skills, to be provided by any of the collaborative agencies and access points for the youth identified.

(d) Assistance with identifying the means for health insurance and educational linkages when the young person is more than 18 years of age.

(e) Specific plans for the young adult to identify individuals and community services that can provide support during the transition to 21 years of age.

(f) Assurances that goals for young adults are individual, identified by the youth, and developmentally appropriate.

(g) Any requirements for interagency collaboration, agreements, or protocols contained in this section shall not diminish requirements for the confidentiality of medical information or information maintained by a county agency or department.
(Added by Stats.2000, c. 520 (S.B.1452), § 10.)

§ 5865.3. Systems of care serving children 0 to 5 years old; required structures and services

When a county system of care services children, zero to five years of age, the following structures and services shall be available, and when not available, the county plan shall identify a timeline for the development of these services:

(a) Collaborative agreements with public health systems, regional center services, child care programs, CalWORKs providers, drug and alcohol treatment programs, child welfare services, and other agencies that may identify children and families at risk of mental health problems that affect young children.

(b) Outreach protocols that can assist parents to identify child behaviors that may be addressed early to prevent mental or emotional disorders and assure normal child development.

(c) Identification of trained specialists that can assist the parents of very young children at risk for emotional, social, or developmental problems with treatment.

(d) Performance measures that ensure that services to families of very young children are individual, identified by the family, and developmentally appropriate.
(Added by Stats.2000, c. 520 (S.B.1452), § 11.)

§ 5866. Interagency collaboration; county interagency policy and planning committees; interagency case management council; interagency agreements or memoranda of understanding

(a) Counties shall develop a method to encourage interagency collaboration with shared responsibility for services and the client and cost outcome goals.

(b) The local mental health director shall form or facilitate the formation of a county interagency policy and planning committee. The members of the council shall include, but not be limited to, family

members of children who have been or are currently being served in the county mental health system and the leaders of participating local government agencies, to include a member of the board of supervisors, a juvenile court judge, the district attorney, the public defender, the county counsel, the superintendent of county schools, the public social services director, the chief probation officer, and the mental health director.

(c) The duties of the committee shall include, but not be limited to, all of the following:

(1) Identifying those agencies that have a significant joint responsibility for the target population and ensuring collaboration on countywide planning and policy.

(2) Identifying gaps in services to members of the target population, developing policies to ensure service effectiveness and continuity, and setting priorities for interagency services.

(3) Implementing public and private collaborative programs whenever possible to better serve the target population.

(d) The local mental health director shall form or facilitate the formation of a countywide interagency case management council whose function shall be to coordinate resources to specific target population children who are using the services of more than one agency concurrently. The members of this council shall include, but not be limited to, representatives from the local special education, juvenile probation, children's social services, and mental health services agencies, with necessary authority to commit resources from their agency to an interagency service plan for a child and family. The roles, responsibilities, and operation of these councils shall be specified in written interagency agreements or memoranda of understanding, or both.

(e) The local mental health director shall develop written interagency agreements or memoranda of understanding with the agencies listed in this subdivision, as necessary. Written interagency agreements or memoranda shall specify jointly provided or integrated services, staff tasks and responsibilities, facility and supply commitments, budget considerations, and linkage and referral services. The agreements shall be reviewed and updated annually.

(f) The agreements required by subdivision (e) may be established with any of the following:

(1) Special education local planning area consortiums.

(2) The court juvenile probation department.

(3) The county child protective services agency.

(4) The county public health department.

(5) The county department of drug and alcohol services.

(6) Other local public or private agencies serving children.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2. Amended by Stats.2000, c. 520 (S.B.1452), § 12.)

§ 5867. Maintenance of effort; reduction of existing services

Counties shall demonstrate a maintenance of effort in children's mental health services. Any reduction of existing Bronzan–McCorquodale children's services provided under Part 2 (commencing with Section 5600) shall be identified and justified in the program proposal developed under this chapter.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

§ 5867.5. Mental health assessment and treatment services; children in group care

(a) Beginning in the 1998–99 fiscal year, county mental health departments that receive full system of care funding, as determined by the State Department of Mental Health in consultation with counties, shall provide to children served by county social services and probation departments mental health screening, assessment, participation in multidisciplinary placement teams and specialty mental health treatment services for children placed out of home in group care, for those children who meet the definition of medical necessity, to the extent resources are available. These counties shall give first priority to children currently receiving psychoactive medication.

(b) The State Department of Mental Health shall develop, by June 1, 1999, an estimate of the extent to which mental health assessment and treatment resources are available to meet all of the following needs:

(1) Children placed in group care by county departments of social services and probation.

(2) Children placed in out–of–home care by county departments of social services.

(3) Children at risk of placement out of home who are receiving services from county departments of social services or probation.

(c) The estimate required by subdivision (b) shall include identification of specific resource gaps, including human resource gaps, in the delivery of specialty mental health services to children identified by county social services and probation.

(d) The State Department of Mental Health shall develop, with the assistance of the State Department of Social Services and the Judicial Council, with participation by county mental health departments, county health departments, and county social services departments, and in consultation with group home providers and representatives of current or former foster youth and representatives of pediatricians and child and adolescent psychiatrists, by July 1, 1999, a procedure for review of treatment plans for children receiving prescribed psychoactive medication and who are placed in out–of–home care.

(Added by Stats.1998, c. 311 (S.B.933), § 56, eff. Aug. 19, 1998.)

Article 7 COUNTY SERVICE STANDARDS

§ 5868. Establishment of standards; components; responsibilities of case managers

(a) The department shall establish service standards that ensure that children in the target population are identified and receive needed and appropriate services from qualified staff in the least restrictive environment.

(b) The standards shall include, but not be limited to:

(1) Providing a comprehensive assessment and treatment plan for each target population client to be served, and developing programs and services that will meet their needs and facilitate client outcome goals.

(2) Providing for full participation of the family in all aspects of assessment, case planning, and treatment.

(3) Providing methods of assessment and services to meet the cultural, linguistic, and special needs of minorities in the target population.

(4) Providing for staff with the cultural background and linguistic skills necessary to remove barriers to mental health services resulting from a limited ability to speak English or from cultural differences.

(5) Providing mental health case management for all target population clients in, or being considered for, out–of–home placement.

(6) Providing mental health services in the natural environment of the child to the extent feasible and appropriate.

(c) The responsibility of the case managers shall be to ensure that each child receives the following services:

(1) A comprehensive mental health assessment.

(2) Case planning with all appropriate interagency participation.

(3) Linkage with all appropriate mental health services.

(4) Service plan monitoring.

(5) Client advocacy to ensure the provision of needed services.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

Article 8 STATE DEPARTMENT OF MENTAL HEALTH REQUIREMENTS

§ 5869. Services and contracts to be provided to participating counties

The department shall provide participating counties with all of the following:

(a) Applications for funding guidelines and format, and

coordination and oversight of the selection process as described in Article 4 (commencing with Section 5857).

(b) Contracts with each state funded county specifying the approved budget, performance outcomes, and a scope of work plan for each year of participation in the children's system of care program.

(c) Technical assistance related to system evaluation.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2. Amended by Stats.1996, c. 1167 (S.B.1667), § 4, eff. Sept. 30, 1996; Stats.2000, c. 520 (S.B.1452), § 13; Stats.2002, c. 1161 (A.B.442), § 37, eff. Sept. 30, 2002.)

§ 5870. Advisory group; members; functions

The State Department of Mental Health shall establish an advisory group comprised of, but not limited to, representatives from the State Department of Education, the State Department of Social Services, the State Department of Mental Health, the Secretary of Child Development and Education, the County Mental Health Directors Association, the County Welfare Directors Association, the Chief Probation Officers Association, the Special Education Local Planning Areas Directors Association, and service providers from the private sector. The function of the advisory group shall be to advise and assist the state and counties in the development of a coordinated, comprehensive children's services system under this part and other duties as defined by the Director of Mental Health.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2. Amended by Stats.1996, c. 1167 (S.B.1667), § 5, eff. Sept. 30, 1996.)

Article 9 REQUIREMENT TO COLLECT REIMBURSEMENTS

§ 5872. Sources of reimbursements

In order to offset the cost of services, participating counties shall collect reimbursement for services from the following sources:

(a) Fees paid by families, which shall be the same as patient fees established pursuant to Section 5718.

(b) Fees paid by private or public third–party payers.

(c) Categorical funds from sources established in state or federal law, for which persons with mental disorders are eligible.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

Article 10 APPLICATION FOR STATE REGULATION WAIVERS

§ 5875. Development of administrative waiver process

The Secretary of Health and Welfare shall require the State Department of Mental Health to develop an administrative waiver process for counties that either propose to be, or are considered, system of care counties by the department.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

§ 5877. Waiver requests; statement of reason

(a) For system of care counties, or as part of the county program proposal to apply for status as a system of care county, requests may be made for waivers from those state regulations that appear to prevent interagency coordination or collaboration in interagency case management and other service delivery capabilities.

(b) The state regulation or regulations shall be specifically identified in the waiver request, with a statement of the reason why the identified regulation or regulations should be waived and, where applicable, the following:

(1) An assurance as to how planned interagency collaborative activities can meet the program intent of the regulation or regulations.

(2) An explanation as to why the identified regulation or regulations would create duplication of effort with an interagency collaborative approach.

(3) An explanation as to how a waiver of the regulation or regulations would not hinder the ability of the involved state agency's fiscal accountability or responsibility for federal moneys, and how granting of the waiver would support achievement of estimated cost avoidance, and result in decreased use of group homes, children and adolescent state hospital programs, nonpublic school residential placement, and juvenile justice reincarcerations, and in improved school attendance or performance.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

§ 5878. Waiver of regulatory obstacles to integration of public responsibilities and resources; federal waivers and changes to support interagency collaboration and coordination

(a) (1) The Secretary of the Health and Welfare Agency, the Superintendent of Public Instruction, or the Secretary of the Youth and Corrections Agency may waive any state regulatory obstacles to the integration of public responsibilities and resources required for counties which have been approved as system of care counties.

(2) The waiver shall remain in effect as long as the local program continues to meet standards as specified in the scope of work plan approved by the State Department of Mental Health.

(b) The Secretary of Health and Welfare, the Superintendent of Public Instruction, and the Secretary of the Youth and Corrections Agency, and those departments designated as single state agencies administering federal programs, shall make every effort to secure federal waivers and any other changes in federal policy or law necessary to support interagency collaboration and coordination in a system of care service delivery system.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

Article 11 SERVICES FOR CHILDREN WITH SEVERE MENTAL ILLNESS

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

§ 5878.1. Intent of article; services to severely mentally ill children; consent of parent or guardian

(a) It is the intent of this article to establish programs that assure services will be provided to severely mentally ill children as defined in Section 5878.2 and that they be part of the children's system of care established pursuant to this part. It is the intent of this act that services provided under this chapter to severely mentally ill children are accountable, developed in partnership with youth and their families, culturally competent, and individualized to the strengths and needs of each child and their family.

(b) Nothing in this act shall be construed to authorize any services to be provided to a minor without the consent of the child's parent or legal guardian beyond those already authorized by existing statute.

(Added by Initiative Measure (Prop. 63, § 5, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

§ 5878.2. Severely mentally ill children; defined

For purposes of this article, severely mentally ill children means minors under the age of 18 who meet the criteria set forth in subdivision (a) of Section 5600.3.

(Added by Initiative Measure (Prop. 63, § 5, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

§ 5878.3. Services provided where other mental health or entitlement programs are inadequate; funding

(a) Subject to the availability of funds as determined pursuant to

Part 4.5 (commencing with Section 5890) of this division, county mental health programs shall offer services to severely mentally ill children for whom services under any other public or private insurance or other mental health or entitlement program is inadequate or unavailable. Other entitlement programs include but are not limited to mental health services available pursuant to Medi–Cal, child welfare, and special education programs. The funding shall cover only those portions of care that cannot be paid for with public or private insurance, other mental health funds or other entitlement programs.

(b) Funding shall be at sufficient levels to ensure that counties can provide each child served all of the necessary services set forth in the applicable treatment plan developed in accordance with this part, including services where appropriate and necessary to prevent an out of home placement, such as services pursuant to Chapter 4 (commencing with Section 18250) of Part 6 of Division 9.

(c) The State Department of Mental Health shall contract with county mental health programs for the provision of services under this article in the manner set forth in Section 5897.

(Added by Initiative Measure (Prop. 63, § 5, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

Chapter 2 SYSTEM EVALUATION

§ 5879. Legislative intent

(a) It is the intent of the Legislature to increase the accountability of mental health and other human services programs whenever feasible by developing and implementing new and useful measures of performance, including client and cost outcomes. The Legislature recognizes the advances in performance and outcome evaluation made by counties funded under previous statutes and seeks to continue this development with future participating counties.

(b) It is the intent of the Legislature to have a comparison of the performance indicators of each participating county to the state average whenever possible, as well as a comparison of all participating counties as a group to the state averages.

(c) It is the further intent of the Legislature to have a comparison of the performance indicators of participating counties to their history and future anticipated performance based on utilization trends and costs.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2.)

§ 5880. System performance goals; definition and establishment; negotiation of expected levels of attainment

For each selected county the department shall define and establish client and cost outcome and other system performance goals, and negotiate the expected levels of attainment for each year of participation. Expected levels of attainment shall include a breakdown by ethnic origin and shall be identified by a county in its proposal. These goals shall include, but not be limited to, both of the following:

(a) Client improvement and cost avoidance outcome measures, as follows:

(1) To reduce the number of child months in group homes, residential placements pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and state hospital placements.

(2) To reduce the cost of AFDC–FC group home care, residential placements as described in paragraph (1), and state hospital utilization, by an amount which equals at least 50 percent of the third year project cost. Cost avoidance shall be based on data comparisons of statewide average expenditure and population.

(3) To increase school attendance for pupils in targeted programs.

(4) To increase the grade level equivalent of pupils in targeted programs from admission to discharge.

(5) To reduce the rate of recidivism incurred for wards in targeted juvenile justice programs.

(6) To show measurable improvement in individual and family functional status for a representative sample of children enrolled in the system of care.

(7) To achieve statistically significant increases in services provided in nonclinic settings among agencies.

(8) To increase ethnic minority and gender access to services proportionate to the percentage of these groups in the county's school–age population.

(b) System development and operation measures, as follows:

(1) To provide an integrated system of care that includes multiagency programs and joint case planning, to children who are seriously emotionally and behaviorally disturbed as defined in Section 5856.

(2) To identify and assess children who comprise the target population in the county evidenced by a roster which contains all children receiving mental health case management and treatment services. This roster shall include necessary standardized and uniform identifying information and demographics about the children served.

(3) To develop and maintain individualized service plans that will facilitate interagency service delivery in the least restrictive environment.

(4) To develop or provide access to a range of intensive services that will meet individualized service plan needs. These services shall include, but not be limited to, case management, expanded treatment services at schoolsites, local juvenile corrections facilities, and local foster homes, and flexible services.

(5) To ensure the development and operation of the interagency policy council and the interagency case management council.

(6) To provide culturally competent programs that recognize and address the unique needs of ethnic populations in relation to equal access, program design and operation, and program evaluation.

(7) To develop parent education and support groups, and linkages with parents to ensure their involvement in the planning process and the delivery of services.

(8) To provide a system of evaluation that develops outcome criteria and which will measure performance, including client outcome and cost avoidance.

(9) To gather, manage, and report data in accordance with the requirements of the state funded outcome evaluation.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2. Amended by Stats.2000, c. 520 (S.B.1452), § 14.)

§ 5881. Conduct of evaluation

(a) Evaluation shall be conducted by both participating county evaluation staff and, subject to the availability of funds, by the department.

(b) Evaluation at both levels shall do all of the following:

(1) Ensure that county level systems of care are serving the targeted population.

(2) Ensure that the timely performance data related to client outcome and cost avoidance is collected, analyzed, and reported.

(3) Ensure that system of care components are implemented as intended.

(4) Provide information documenting needs for future planning.

(Added by Stats.1992, c. 1229 (A.B.3015), § 2. Amended by Stats.2002, c. 1161 (A.B.442), § 38, eff. Sept. 30, 2002.)

§ 5882. Assignment of resources; cooperation with department

(a) Participating counties shall assign sufficient resources to performance evaluation to enable the county to fulfill all evaluation responsibilities specified in the contract with the department.

(b) Counties shall cooperate with the department regarding the development of uniform measures of performance.
(Added by Stats.1992, c. 1229 (A.B.3015), § 2. Amended by Stats.2002, c. 1161 (A.B.442), § 39, eff. Sept. 30, 2002.)

§ 5883. Access to relevant data; facilitation; funding and resources; duties of department

(a) The department shall facilitate improved access to relevant client and financial data from all state agencies, including, but not limited to, the State Department of Social Services, the State Department of Education, the State Department of Health Services, the State Department of Mental Health, the Department of the Youth Authority, and the Department of Finance.

(b) The State Department of Mental Health shall expand the funding allocated to the contract for independent evaluation, as necessary to accommodate the increase in workload created by the addition of new sites.

(c) Subject to the availability of funds, the department shall do all of the following:

(1) Develop uniform data collection and reporting measures applicable to all participating counties.

(2) Collect, analyze, and report performance outcome data for participating counties as a group in comparison to state averages.

(3) Offer technical assistance to participating counties related to data collection, analysis, and reporting.
(Added by Stats.1992, c. 1229 (A.B.3015), § 2. Amended by Stats.2002, c. 1161 (A.B.442), § 40, eff. Sept. 30, 2002.)

Part 4.5 MENTAL HEALTH SERVICES FUND

Operative Effect

For provisions governing the effective date, implementation, construction and severability of Initiative Measure (Prop. 63), see §§ 16 to 19 of that measure.

§ 5890. Mental Health Services Fund created; purposes; construction and application to health care service plans of insurance policies

(a) The Mental Health Services Fund is hereby created in the State Treasury. The fund shall be administered by the State Department of Mental Health. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are continuously appropriated to the department, without regard to fiscal years, for the purpose of funding the following programs and other related activities as designated by other provisions of this division:

(1) Part 3 (commencing with Section 5800), the Adult and Older Adult System of Care Act.

(2) Part 3.6 (commencing with Section 5840), Prevention and Early Intervention Programs.

(3) Part 4 (commencing with Section 5850), the Children's Mental Health Services Act.

(b) Nothing in the establishment of this fund, nor any other provisions of the act establishing it or the programs funded shall be construed to modify the obligation of health care service plans and disability insurance policies to provide coverage for mental health services, including those services required under Section 1374.72 of the Health and Safety Code and Section 10144.5 of the Insurance Code, related to mental health parity. Nothing in this act shall be construed to modify the oversight duties of the Department of Managed Health Care or the duties of the Department of Insurance with respect to enforcing such obligations of plans and insurance policies.

(c) Nothing in this act shall be construed to modify or reduce the existing authority or responsibility of the State Department of Mental Health.

(d) The State Department of Health Services, in consultation with the State Department of Mental Health, shall seek approval of all applicable federal Medicaid approvals to maximize the availability of federal funds and eligibility of participating children, adults and seniors for medically necessary care.

(e) Share of costs for services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division, shall be determined in accordance with the Uniform Method for Determining Ability to Pay applicable to other publicly funded mental health services, unless such Uniform Method is replaced by another method of determining co–payments, in which case the new method applicable to other mental health services shall be applicable to services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division.
(Added by Initiative Measure (Prop. 63, § 15, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

§ 5891. Use of funds; expansion of mental health services

The funding established pursuant to this act shall be utilized to expand mental health services. These funds shall not be used to supplant existing state or county funds utilized to provide mental health services. The state shall continue to provide financial support for mental health programs with not less than the same entitlements, amounts of allocations from the General Fund and formula distributions of dedicated funds as provided in the last fiscal year which ended prior to the effective date of this act. The state shall not make any change to the structure of financing mental health services, which increases a county's share of costs or financial risk for mental health services unless the state includes adequate funding to fully compensate for such increased costs or financial risk. These funds shall only be used to pay for the programs authorized in Section 5892. These funds may not be used to pay for any other program. These funds may not be loaned to the state General Fund or any other fund of the state, or a county general fund or any other county fund for any purpose other than those authorized by Section 5892.
(Added by Initiative Measure (Prop. 63, § 15, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

§ 5892. Allocation of funds available in the Mental Health Services Fund

(a) In order to promote efficient implementation of this act allocate the following portions of funds available in the Mental Health Services Fund in 2005–06 and each year thereafter:

(1) In 2005–06, 2006–07, and in 2007–08 10 percent shall be placed in a trust fund to be expended for education and training programs pursuant to Part 3.1.

(2) In 2005–06, 2006–07 and in 2007–08 10 percent for capital facilities and technological needs distributed to counties in accordance with a formula developed in consultation with the California Mental Health Directors Association to implement plans developed pursuant to Section 5847.

(3) Twenty percent for prevention and early intervention programs distributed to counties in accordance with a formula developed in consultation with the California Mental Health Directors Association pursuant to Part 3.6 (commencing with Section 5840) of this division. Each county's allocation of funds shall be distributed only after its annual program for expenditure of such funds has been approved by the Mental Health Services Oversight and Accountability Commission established pursuant to Section 5845.

(4) The allocation for prevention and early intervention may be increased in any county which the department determines that such increase will decrease the need and cost for additional services to severely mentally ill persons in that county by an amount at least commensurate with the proposed increase. The statewide allocation for prevention and early intervention may be increased whenever the Mental Health Services Oversight and Accountability Commission determines that all counties are receiving all necessary funds for services to severely mentally ill persons and have established prudent reserves and there are additional revenues available in the fund.

(5) The balance of funds shall be distributed to county mental health programs for services to persons with severe mental illnesses

pursuant to Part 4 (commencing with Section 5850), for the children's system of care and Part 3 (commencing with Section 5800), for the adult and older adult system of care.

(6) Five percent of the total funding for each county mental health program for Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division, shall be utilized for innovative programs pursuant to an approved plan required by Section 5830 and such funds may be distributed by the department only after such programs have been approved by the Mental Health Services Oversight and Accountability Commission established pursuant to Section 5845.

(b) In any year after 2007–08, programs for services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division may include funds for technological needs and capital facilities, human resource needs, and a prudent reserve to ensure services do not have to be significantly reduced in years in which revenues are below the average of previous years. The total allocation for purposes authorized by this subdivision shall not exceed 20 percent of the average amount of funds allocated to that county for the previous five years pursuant to this section.

(c) The allocations pursuant to subdivisions (a) and (b) shall include funding for annual planning costs pursuant to Section 5848. The total of such costs shall not exceed 5 percent of the total of annual revenues received for the fund. The planning costs shall include funds for county mental health programs to pay for the costs of consumers, family members and other stakeholders to participate in the planning process and for the planning and implementation required for private provider contracts to be significantly expanded to provide additional services pursuant to Part 3 (commencing with Section 5800), and Part 4 (commencing with Section 5850) of this division.

(d) Prior to making the allocations pursuant to subdivisions (a), (b)and (c), the department shall also provide funds for the costs for itself, the California Mental Health Planning Council and the Mental Health Services Oversight and Accountability Commission to implement all duties pursuant to the programs set forth in this section. Such costs shall not exceed 5 percent of the total of annual revenues received for the fund. The administrative costs shall include funds to assist consumers and family members to ensure the appropriate state and county agencies give full consideration to concerns about quality, structure of service delivery or access to services. The amounts allocated for administration shall include amounts sufficient to ensure adequate research and evaluation regarding the effectiveness of services being provided and achievement of the outcome measures set forth in Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division.

(e) In 2004–05 funds shall be allocated as follows:

(1) 45 percent for education and training pursuant to Part 3.1 (commencing with Section 5820) of this division.

(2) 45 percent for capital facilities and technology needs in the manner specified by paragraph (2) of subdivision (a).

(3) 5 percent for local planning in the manner specified in subdivision (c) and

(4) 5 percent for state implementation in the manner specified in subdivision (d).

(f) Each county shall place all funds received from the State Mental Health Services Fund in a local Mental Health Services Fund. The Local Mental Health Services Fund balance shall be invested consistent with other county funds and the interest earned on such investments shall be transferred into the fund. The earnings on investment of these funds shall be available for distribution from the fund in future years.

(g) All expenditures for county mental health programs shall be consistent with a currently approved plan or update pursuant to Section 5847.

(h) Other than funds placed in a reserve in accordance with an approved plan, any funds allocated to a county which have not been spent for their authorized purpose within three years shall revert to the state to be deposited into the fund and available for other counties in future years, provided however, that funds for capital facilities, technological needs or education and training may be retained for up to 10 years before reverting to the fund.

(i) If there are still additional revenues available in the fund after the Mental Health Services Oversight and Accountability Commission has determined there are prudent reserves and no unmet needs for any of the programs funded pursuant to this section, including all purposes of the Prevention and Early Intervention Program, the commission shall develop a plan for expenditures of such revenues to further the purposes of this act and the Legislature may appropriate such funds for any purpose consistent with the commission's adopted plan which furthers the purposes of this act.

(Added by Initiative Measure (Prop. 63, § 15, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

§ 5893. Funds in excess of allocation; investment

(a) In any year in which the funds available exceed the amount allocated to counties, such funds shall be carried forward to the next fiscal year to be available for distribution to counties in accordance with Section 5892 in that fiscal year.

(b) All funds deposited into the Mental Health Services Fund shall be invested in the same manner in which other state funds are invested. The fund shall be increased by its share of the amount earned on investments.

(Added by Initiative Measure (Prop. 63, § 15, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

§ 5894. Distribution of funds in event of restructuring of division

In the event that Part 3 (commencing with Section 5800) or Part 4 (commencing with Section 5850) of this division, are restructured by legislation signed into law before the adoption of this measure, the funding provided by this measure shall be distributed in accordance with such legislation; provided, however, that nothing herein shall be construed to reduce the categories of persons entitled to receive services.

(Added by Initiative Measure (Prop. 63, § 15, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

§ 5895. Distribution of funds in event of repeal or modification of division

In the event any provisions of Part 3 (commencing with Section 5800), or Part 4 (commencing with Section 5850) of this division, are repealed or modified so the purposes of this act cannot be accomplished, the funds in the Mental Health Services Fund shall be administered in accordance with those sections as they read on January 1, 2004.

(Added by Initiative Measure (Prop. 63, § 15, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

§ 5897. Implementation of mental health services; contracts with county mental health programs; compliance with performance contracts

(a) Notwithstanding any other provision of state law, the State Department of Mental Health shall implement the mental health services provided by Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division through contracts with county mental health programs or counties acting jointly. A contract may be exclusive and may be awarded on a geographic basis. As used here–in a county mental health program includes a city receiving funds pursuant to Section 5701.5.

(b) Two or more counties acting jointly may agree to deliver or subcontract for the delivery of such mental health services. The agreement may encompass all or any part of the mental health services

provided pursuant to these parts. Any agreement between counties shall delineate each county's responsibilities and fiscal liability.

(c) The department shall implement the provisions of Part 3 (commencing with Section 5800), Part 3.2 (commencing with Section 5830), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division through the annual county mental health services performance contract, as specified in Chapter 2 (commencing with Section 5650) of Part 2 of Division 5.

(d) When a county mental health program is not in compliance with its performance contract, the department may request a plan of correction with a specific timeline to achieve improvements.

(e) Contracts awarded by the State Department of Mental Health, the California Mental Health Planning Council, and the Mental Health Services Oversight and Accountability Commission pursuant to Part 3 (commencing with Section 5800), Part 3.1 (commencing with Section 5820), Part 3.2 (commencing with Section 5830), Part 3.6 (commencing with Section 5840), Part 3.7 (commencing with Section 5845), Part4 (commencing with Section 5850), and Part 4.5 (commencing with Section 5890) of this division, may be awarded in the same manner in which contracts are awarded pursuant to Section 5814 and the provisions of subdivisions (g) and (h) of Section 5814 shall apply to such contracts.

(f) For purposes of Section 5775, the allocation of funds pursuant to Section 5892 which are used to provide services to Medi–Cal beneficiaries shall be included in calculating anticipated county matching funds and the transfer to the department of the anticipated county matching funds needed for community mental health programs.

(Added by Initiative Measure (Prop. 63, § 15, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

§ 5898. Development and adoption of regulations

The department shall develop regulations, as necessary, for the department or designated local agencies to implement this act. In 2005, the director may adopt all regulations pursuant to this act as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purpose of the Administrative Procedure Act, the adoption of regulations, in 2005, shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. These regulations shall not be subject to the review and approval of the Office of Administrative Law and shall not be subject to automatic repeal until final regulations take effect. Emergency regulations adopted in accordance with this provision shall not remain in effect for more than a year. The final regulations shall become effective upon filing with the Secretary of State. Regulations adopted pursuant to this section shall be developed with the maximum feasible opportunity for public participation and comments.

(Added by Initiative Measure (Prop. 63, § 15, approved Nov. 2, 2004, eff. Jan. 1, 2005).)

Part 5 INSTITUTIONS FOR MENTAL DISEASE

Chapter 1 GENERAL PROVISIONS

Article 1 LEGISLATIVE FINDINGS AND INTENT

§ 5900. Purpose of part

This part is intended to organize and finance mental health services in skilled nursing facilities designated as institutions for mental disease, in a way that will promote the well–being of the residents. It is furthermore intended to effectively utilize existing resources in the delivery of mental health services to severely and persistently mentally disabled persons; to ensure continued receipt of federal funds; to minimize the fiscal exposure of counties; to maintain state responsibility for licensing and certification; to maintain services to individual county consumers at the 1990–91 fiscal year levels; and to provide a mechanism for the orderly transition of programmatic and fiscal responsibility from the state to the counties, in a way that will maintain the stability and viability of the industry.

(Added by Stats.1991, c. 89 (A.B.1288), § 198, eff. June 30, 1991.)

§ 5901. Issues to be resolved

(a) The Legislature finds that the following issues relating to program operation must be resolved prior to the full assumption of responsibility for institutions for mental disease program monitoring and reimbursement procedures by the counties:

(1) The information regarding the program is inadequate to accurately allocate funding to the counties without significant disruption of patient care.

(2) There is currently no administrative mechanism whereby all counties can immediately assume these responsibilities without endangering the health and safety of the persons being served.

(b)(1) During the 1991–92 fiscal year, the sum of eighty–seven million seven hundred twenty–seven thousand dollars ($87,727,000) shall be made available from the Mental Health Subaccount of the Sales Tax Account of the Local Revenue Fund to the department for support of institutions for mental disease.

(2) For the 1991–92 fiscal year, the department shall issue a preliminary allocation of at least fifty–seven million four hundred fifty thousand dollars ($57,450,000) of the amount identified in paragraph (1). In developing a preliminary allocation, the department shall utilize a methodology that will minimize disruption of services to persons being served and that will continue access at the 1990–91 fiscal year level.

(3) During the 1991–92 fiscal year, the department shall administer institution for mental disease resources remaining from the amount identified in paragraph (1) after the allocation described in (2) has been made, as a risk pool on behalf of all the counties. Effective July 1, 1991, the department shall enter into contracts with institutions for mental disease providers at the 1990–91 fiscal year contract bed level. These resources shall be made available to all counties.

(4) The department shall establish a method for the identification of persons, by county, residing in institutions for mental disease, and notification of counties of their program and fiscal responsibilities.

(c) The Department of Finance may authorize a loan of up to twenty million dollars ($20,000,000) from the General Fund for deposit into the Institutions for Mental Disease Account of the Mental Health Facilities Fund established pursuant to Section 17602.05, for use by the State Department of Mental Health in implementing this part.

(Added by Stats.1991, c. 89 (A.B.1288), § 198, eff. June 30, 1991.)

Article 2 INTERIM CONTRACTING MECHANISM

§ 5902. County administration of institutions; transitional provisions

(a) In the 1991–92 fiscal year, funding sufficient to cover the cost of the basic level of care in institutions for mental disease at the rate established by the State Department of Health Services shall be made available to the department for skilled nursing facilities, plus the rate established for special treatment programs. The department may authorize a county to administer institutions for mental disease services if the county with the consent of the affected providers makes a request to administer services and an allocation is made to the county for these services. The department shall continue to contract with these providers for the services necessary for the operation of the institutions for mental disease.

(b) In the 1992–93 fiscal year, the department shall consider county–specific requests to continue to provide administrative services relative to institutions for mental disease facilities when no viable alternatives are found to exist.

(c)(1) By October 1, 1991, the department, in consultation with the California Conference of Local Mental Health Directors and the

California Association of Health Facilities, shall develop and publish a county–specific allocation of institutions for mental disease funds which will take effect on July 1, 1992.

(2) By November 1, 1991, counties shall notify the providers of any intended change in service levels to be effective on July 1, 1992.

(3) By April 1, 1992, counties and providers shall have entered into contracts for basic institutions for mental disease services at the rate described in subdivision (e) for the 1992–93 fiscal year at the level expressed on or before November 1, 1991, except that a county shall be permitted additional time, until June 1, 1992, to complete the processing of the contract, when any of the following conditions are met:

(A) The county and the affected provider have agreed on all substantive institutions for mental disease contract issues by April 1, 1992.

(B) Negotiations are in process with the county on April 1, 1992, and the affected provider has agreed in writing to the extension.

(C) The service level committed to on November 1, 1991, exceeds the affected provider's bed capacity.

(D) The county can document that the affected provider has refused to enter into negotiations by April 1, 1992, or has substantially delayed negotiations.

(4) If a county and a provider are unable to reach agreement on substantive contract issues by June 1, 1992, the department may, upon request of either the affected county or the provider, mediate the disputed issues.

(5) Where contracts for service at the level committed to on November 1, 1991, have not been completed by April 1, 1992, and additional time is not permitted pursuant to the exceptions specified in paragraph (3) the funds allocated to those counties shall revert for reallocation in a manner that shall promote equity of funding among counties. With respect to counties with exceptions permitted pursuant to paragraph (3), funds shall not revert unless contracts are not completed by June 1, 1992. In no event shall funds revert under this section if there is no harm to the provider as a result of the county contract not being completed. During the 1992–93 fiscal year, funds reverted under this paragraph shall be used to purchase institution for mental disease/skilled nursing/special treatment program services in existing facilities.

(6) Nothing in this section shall apply to negotiations regarding supplemental payments beyond the rate specified in subdivision (e).

(d) On or before April 1, 1992, counties may complete contracts with facilities for the direct purchase of services in the 1992–93 fiscal year. Those counties for which facility contracts have not been completed by that date shall be deemed to continue to accept financial responsibility for those patients during the subsequent fiscal year at the rate specified in subdivision (a).

(e) As long as contracts with institutions for mental disease providers require the facilities to maintain skilled nursing facility licensure and certification, reimbursement for basic services shall be at the rate established by the State Department of Health Services * * *. Except as provided in this section, reimbursement rates for services in institutions for mental diseases shall be the same as the rates in effect on July 31, 2004. Effective July 1, 2005, through June 30, 2008, the reimbursement rate for institutions for mental disease shall increase by 6.5 percent annually. Effective July 1, 2008, the reimbursement rate for institutions for mental disease shall increase by 4.7 percent annually.

(f)(1) Providers that agree to contract with the county for services under an alternative mental health program pursuant to Section 5768 that does not require skilled nursing facility licensure shall retain return rights to licensure as skilled nursing facilities.

(2) Providers participating in an alternative program that elect to return to skilled nursing facility licensure shall only be required to meet those requirements under which they previously operated as a skilled nursing facility.

(g) In the 1993–94 fiscal year and thereafter, the department shall consider requests to continue administrative services related to institutions for mental disease facilities from counties with a population of 150,000 or less based on the most recent available estimates of population data as determined by the Population Research Unit of the Department of Finance.

(Added by Stats.1991, c. 89 (A.B.1288), § 198, eff. June 30, 1991. Amended by Stats.1992, c. 23 (S.B.984), § 4, eff. April 1, 1992; Stats.1992, c. 1374 (A.B.14), § 50, eff. Oct. 28, 1992; Stats.2005, c. 508 (A.B.360), § 5, eff. Oct. 4, 2005.)

§ 5903. SSI/SSP benefits; collection from clients and client payees by institution for mental disease providers; remission to department of collected funds until June 30, 1992; provider not deemed authorized representative; proration of benefits by days spent at facility; availability to Legislature of collections data

(a) For the purposes of this section, the following definitions shall apply:

(1) "Client" means an individual who is all of the following:

(A) Mentally disabled.

(B) Medi–Cal eligible.

(C) Under the age of 65 years.

(D) Certified for placement in an institution for mental disease by a county.

(E) Eligible for Supplemental Security Income/State Supplementary Program for the Aged, Blind, and Disabled (SSI/SSP) benefits.

(2) "Client's payee" means an authorized representative who may receive revenue resources, including SSI/SSP benefits, on behalf of a client.

(3) "SSI/SSP benefits" means revenue resources paid to an eligible client, or the client's payee, by the federal Social Security Administration pursuant to Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code, and Chapter 3 (commencing with Section 12000) of Part 3 of Division 9.

(b)(1) Between August 1, 1991, and June 30, 1992, institution for mental disease providers shall make reasonable efforts to collect SSI/SSP benefits from a client or a client's payee. The provider shall invoice the client or the client's payee for the SSI/SSP benefits, minus the personal and incidental allowance amount as established by the Social Security Administration, and remit all SSI/SSP funds collected to the department pursuant to procedures established by the department.

(2) Commencing July 1, 1992, and to the extent permitted by federal law, institution for mental disease providers may collect SSI/SSP benefits from a client or a client's payee. The amount to be invoiced shall be the amount of the client's SSI/SSP benefits, minus the personal and incidental allowance amount as established by the Social Security Administration. The administrative mechanism for collection of SSI/SSP benefits, including designation of the party responsible for collection, shall be determined by negotiation between the counties and the providers.

(c) In collecting SSI/SSP benefits from the client or the client's payee, the provider shall not be deemed to be the authorized representative, as defined in Section 72015 of Title 22 of the California Code of Regulations, for purposes of handling the client's moneys or valuables.

(d) Providers shall make all reasonable efforts, as specified in procedures developed by the department in consultation with providers, to collect SSI/SSP benefits from the client or the client's payee. Providers shall establish an accounting procedure, approved by the department, for the actual collection and remittance of these funds.

(e) Providers shall prorate the client's SSI/SSP benefits by the number of days spent in the facility.

(f) After June 30, 1992, and not later than January 1, 1993, the department shall make data available to the Legislature, upon request, regarding the SSI/SSP collections made by institution for mental disease providers pursuant to this section.
(Added by Stats.1991, c. 89 (A.B.1288), § 198, eff. June 30, 1991. Amended by Stats.1991, c. 918 (S.B.1152), § 1, eff. Oct. 14, 1991.)

§ 5903.5. Liquidation of uncollectible accounts receivable

Notwithstanding any other provision of law, the department may liquidate accounts receivable from individual clients or payees of clients from institution for mental disease funds appropriated by the Legislature, when they have been determined by the department to be uncollectible, including accounts receivable in existence prior to the effective date of this section. Liquidation shall occur no sooner than 12 months after the original date of the accounts receivable debt.
(Added by Stats.1991, c. 918 (S.B.1152), § 2, eff. Oct. 14, 1991.)

Article 3 PROCEDURES FOR THE TRANSFER OF RESPONSIBILITY FROM THE STATE TO THE COUNTIES

§ 5907. Uniform contract format

No later than January 1, 1992, the director, in consultation with the California Conference of Local Mental Health Directors and representatives of institutions for mental disease, shall develop a suggested uniform contract format that may be used by counties for the purchase of services from institutions for mental disease.
(Added by Stats.1991, c. 89 (A.B.1288), § 198, eff. June 30, 1991.)

§ 5908. Services purchased by county; notice of modification of quantity to be purchased

On or before October 1, 1992, and in each following year, the counties contracting directly with the facility shall inform the facility of any intent to modify the quantity of services to be purchased in the subsequent fiscal year. Contracts for these services shall be completed by April 1 of each year for the following year. In the absence of cause, changes shall not be made without this notification.
(Added by Stats.1991, c. 89 (A.B.1288), § 198, eff. June 30, 1991.)

§ 5909. Special treatment programs; authority of director

The Director of Mental Health shall retain the authority and responsibility to monitor and approve special treatment programs in skilled nursing facilities in accordance with Sections 72443 to 72474, inclusive, of Title 22 of the California Code of Regulations.
(Added by Stats.1991, c. 89 (A.B.1288), § 198, eff. June 30, 1991.)

§ 5910. Intercounty agreements with facilities

Nothing in this article shall preclude two or more counties from establishing a single agreement with a facility, or group of facilities, for the purchase of services for the counties as a single entity. When two or more counties enter into an agreement, a single county may act as the host county for the purpose of program management and administration.
(Added by Stats.1991, c. 89 (A.B.1288), § 198, eff. June 30, 1991.)

§ 5911. Expansion of services

A county or group of counties, by agreement, may expand services into additional facilities utilizing any funds available to the county or counties for that purpose.
(Added by Stats.1991, c. 89 (A.B.1288), § 198, eff. June 30, 1991.)

§ 5912. Reimbursement for basic services; rates

As long as contracts require institutions for mental disease to continue to be licensed and certified as skilled nursing facilities by the State Department of Health Services, they shall be reimbursed for basic services at the rate established by the State Department of Health Services * * *. Except as provided in this section, reimbursement rates for services in institutions for mental diseases shall be the same as the rates in effect on July 31, 2004. Effective July 1, 2005, through June 30, 2008, the reimbursement rate for institutions for mental disease shall increase by 6.5 percent annually. Effective July 1, 2008, the reimbursement rate for institutions for mental disease shall increase by 4.7 percent annually.
(Added by Stats.1991, c. 89 (A.B.1288), § 198, eff. June 30, 1991. Amended by Stats.2005, c. 508 (A.B.360), § 6, eff. Oct. 4, 2005.)

WELFARE AND INSTITUTIONS CODE — ADMISSIONS AND JUDICIAL COMMITMENTS

Division 6 ADMISSIONS AND JUDICIAL COMMITMENTS

Part 1 ADMISSIONS

Chapter 1 VOLUNTARY ADMISSIONS TO MENTAL HOSPITALS AND INSTITUTIONS

§ 6000. Requirements for admission

[Application] Pursuant to applicable rules and regulations established by the State Department of Mental Health or the State Department of Developmental Services, the medical director of a state hospital for the mentally disordered or developmentally disabled may receive in such hospital, as a boarder and patient, any person who is a suitable person for care and treatment in such hospital, upon receipt of a written application for the admission of the person into the hospital for care and treatment made in accordance with the following requirements:

(a) **[Adults]** In the case of an adult person, the application shall be made voluntarily by the person, at a time when he is in such condition of mind as to render him competent to make it or, if he is a conservatee with a conservator of the person or person and estate who was appointed under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 with the right as specified by court order under Section 5358 to place his conservatee in a state hospital, by his conservator.

(b) **[Minors]** In the case of a minor person, the application shall be made by his parents, or by the parent, guardian, conservator, or other person entitled to his custody to any of such mental hospitals as may be designated by the Director of Mental Health or the Director of Developmental Services to admit minors on voluntary applications. If the minor has a conservator of the person, or the person and the estate, appointed under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5, with the right as specified by court order under Section 5358 to place the conservatee in a state hospital the application for the minor shall be made by his conservator.

[Voluntary patients] Any such person received in a state hospital shall be deemed a voluntary patient.

[Records] Upon the admission of a voluntary patient to a state hospital the medical director shall immediately forward to the office of the State Department of Mental Health or the State Department of Developmental Services the record of such voluntary patient, showing the name, residence, age, sex, place of birth, occupation, civil condition, date of admission of such patient to such hospital, and such

other information as is required by the rules and regulations of the department.

[Charges] The charges for the care and keeping of a mentally disordered person in a state hospital shall be governed by the provisions of Article 4 (commencing with Section 7275) of Chapter 3 of Division 7 relating to the charges for the care and keeping of mentally disordered persons in state hospitals.

[Departure; adults] A voluntary adult patient may leave the hospital or institution at any time by giving notice of his desire to leave to any member of the hospital staff and completing normal hospitalization departure procedures. A conservatee may leave in a like manner if notice is given by his conservator.

[Departure; minors] A minor person who is a voluntary patient may leave the hospital or institution after completing normal hospitalization departure procedures after notice is given to the superintendent or person in charge by the parents, or the parent, guardian, conservator, or other person entitled to the custody of the minor, of their desire to remove him from the hospital.

[Reapplication on attaining majority] No person received into a state hospital, private mental institution, or county psychiatric hospital as a voluntary patient during his minority shall be detained therein after he reaches the age of majority, but any such person, after attaining the age of majority, may apply for admission into the hospital or institution for care and treatment in the manner prescribed in this section for applications by adult persons.

[Rules and regulations] The State Department of Mental Health or the State Department of Developmental Services shall establish such rules and regulations as are necessary to carry out properly the provisions of this section.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2675, § 86, operative July 1, 1969; Stats.1969, c. 722, p. 1442, § 47, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1971, c. 1593, p. 3356, § 414, operative July 1, 1973; Stats.1973, c. 546, p. 1067, § 55, eff. Sept. 17, 1973; Stats.1977, c. 1252, p. 4597, § 634, operative July 1, 1978; Stats.1978, c. 429, p. 1461, § 219, eff. July 17, 1978, operative July 1, 1978; Stats.1979, c. 730, p. 2536, § 149, operative Jan. 1, 1981; Stats.1980, c. 676, p. 2041, § 340.)

§ 6000.5. Admission of developmentally disabled person to hospital for developmentally disabled

Pursuant to Section 6000, the medical director of a state hospital for the developmentally disabled may receive in such hospital, as a boarder and patient, any developmentally disabled person as defined in Section 4512 who has been referred in accordance with Sections 4652, 4653, and 4803.

(Added by Stats.1973, c. 546, p. 1068, § 56, eff. Sept. 17, 1973. Amended by Stats.1979, c. 373, p. 1398, § 367.)

§ 6001. Admissions to neuropsychiatric institutes

Admissions to the Langley Porter Neuropsychiatric Institute or to the Neuropsychiatric Institute, U.C.L.A. Medical Center, may be on a voluntary basis after approval by the medical superintendent of the clinic or institute, as the case may be.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6002. Persons eligible for admission; application; record; departure

The person in charge of any private institution, hospital, clinic, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally disordered may receive therein as a voluntary patient any person suffering from a mental disorder who is a suitable person for care and treatment in the institution, hospital, clinic, or sanitarium who voluntarily makes a written application to the person in charge for admission into the institution, hospital, clinic, or sanitarium, and who is at the time of making the application mentally competent to make the application. A conservatee, with a conservator of the person, or person and estate, appointed under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5, with the right as specified by court order under Section 5358 to place his conservatee, may be admitted upon written application by his conservator.

After the admission of a voluntary patient to a private institution, hospital, clinic, or sanitarium the person in charge shall forward to the office of the State Department of Mental Health a record of the voluntary patient showing such information as may be required by rule by the department.

A voluntary adult patient may leave the hospital, clinic, or institution at any time by giving notice of his desire to leave to any member of the hospital staff and completing normal hospitalization departure procedures. A conservatee may leave in a like manner if notice is given by his conservator.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1444, § 47.1, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1970, c. 516, p. 1006, § 9; Stats.1971, c. 1593, p. 3358, § 416, operative July 1, 1973; Stats.1977, c. 1252, p. 4599, § 635, operative July 1, 1978.)

§ 6002.10. Inpatient psychiatric treatment; admission procedures for minors; criteria

Any facility licensed under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, to provide inpatient psychiatric treatment, excluding state hospitals, and county hospitals, shall establish admission procedures for minors who meet the following criteria:

(a) The minor is 14 years of age and over, and is under 18 years of age.

(b) The minor is not legally emancipated.

(c) The minor is not detained under Sections 5585.50 and 5585.53.

(d) The minor is not voluntarily committed pursuant to Section 6552.

(e) The minor has not been declared a dependent of the juvenile court pursuant to Section 300 or a ward of the court pursuant to Section 602. The minor's admitting diagnosis or condition is either of the following:

(1) A mental disorder only. Although resistance to treatment may be a product of a mental disorder, the resistance shall not, in itself, imply the presence of a mental disorder or constitute evidence that the minor meets the admission criteria. A minor shall not be considered mentally disordered solely for exhibiting behaviors specified under Sections 601 and 602.

(2) A mental disorder and a substance abuse disorder.

(Added by Stats.1989, c. 1375, § 2.)

§ 6002.15. Explanation of treatment to parent or guardian; notification to minor of minor's rights

(a) Prior to accepting the written authorization for treatment, the facility shall assure that a representative of the facility has given a full explanation of the treatment philosophy of the facility, including, where applicable, the use of seclusion and restraint, the use of medication, and the degree of involvement of family members in the minor's treatment to the parent, guardian or other person entitled to the minor's custody. This explanation shall be given orally and in writing, and shall be documented in the minor's treatment record upon completion.

(b) As part of the admission process, the professional person responsible for the minor's admission shall affirm in writing that the minor meets the admission criteria as specified above.

(c) Upon admission, a facility specified in Section 6002.10 shall do all of the following:

(1) Inform the minor in writing of the availability of an independent clinical review of his or her further inpatient treatment. The notice shall be witnessed and signed by an appropriate representative of the facility.

(2) Within one working day, notify the patients' rights advocate, as defined in Article 2 (commencing with Section 5540) of Chapter 5.2, regarding the admission of the minor.

(3) Provide all minors with a booklet promulgated by the State Department of Mental Health outlining the specific rights of minors in mental health facilities. The booklet shall include the phone number of the local advocate and the hours that he or she may be reached.
(Added by Stats.1989, c. 1375, § 2.5.)

§ 6002.20. Minor's request for independent clinical review; notification of patients' rights advocate; advocate's responsibilities

(a) If the minor requests an independent clinical review of his or her continued inpatient treatment, the patients' rights advocate shall be notified of the request, as soon as practical, but no later than one working day. The role of the advocate shall be to provide information and assistance to the minor relating to the minor's right to obtain an independent clinical review to determine the appropriateness of placement within the facility. The advocate shall conduct his or her activities in a manner least disruptive to patient care in the facility. Nothing in this section shall be construed to limit, or expand, rights and responsibilities the advocate has pursuant to other provisions of law.

(b) An independent review may be requested up to 10 days after admission. At any time the minor may rescind his or her request for a review.
(Added by Stats.1989, c. 1375, § 3.)

§ 6002.25. Independent clinical review; neutral licensed psychiatrist; list of reviewers

The independent clinical review shall be conducted by a licensed psychiatrist with training and experience in treating psychiatric adolescent patients, who is a neutral party to the review, having no direct financial relationship with the treating clinician, nor a personal or financial relationship with the patient, or his or her parents or guardian. Nothing in this section shall prevent a psychiatrist affiliated with a health maintenance organization, as defined in subdivision (b) of Section 1373.10 of the Health and Safety Code, from providing the independent clinical review where the admitting, treating, and reviewing psychiatrists are affiliated with a health maintenance organization that predominantly serves members of a prepaid health care service plan. The independent clinical reviewer shall be assigned, on a rotating basis, from a list prepared by the facility, and submitted to the county mental health director prior to March 1, 1990, and annually thereafter, or more frequently when necessary. The county mental health director shall, on an annual basis, or at the request of the facility, review the facility's list of independent clinical reviewers. The county mental health director shall approve or disapprove the list of reviewers within 30 days of submission. If there is no response from the county mental health director, the facility's list shall be deemed approved. If the county mental health director disapproves one or more of the persons on the list of reviewers, the county mental health director shall notify the facility in writing of the reasons for the disapproval. The county mental health director, in consultation with the facility, may develop a list of one or more additional reviewers within 30 days. The final list shall be mutually agreeable to the county mental health director and the facility. Sections 6002.10 to 6002.40, inclusive, shall not be construed to prohibit the treatment of minors prior to the existence of an approved list of independent clinical reviewers. The independent clinical reviewer may be an active member of the medical staff of the facility who has no direct financial relationship, including, but not limited to, an employment or other contract arrangement with the facility except for compensation received for the service of providing clinical reviews.
(Added by Stats.1989, c. 1375, § 4.)

§ 6002.30. Independent clinical review; information to be considered; timing and procedure

(a) All reasonably available clinical information which is relevant to establishing whether the minor meets the admission criteria pursuant to subdivision (d) of Section 6002.35 shall be considered by the psychiatrist conducting the review. In considering the information presented, the psychiatrist conducting the review shall privately interview the minor, and shall consult the treating clinician to review alternative treatment options which may be suitable for the minor's mental disorder.

(b) If the minor has received medication while an inpatient, the person conducting the review shall be informed of that fact and of the probable effects of the medication. The person presenting the clinical information in favor of inpatient treatment shall also inform the psychiatrist conducting the review of the proposed treatment plan for the minor, and, if known, whether the minor has had any previous independent clinical review at any facility, and the results of that service.

(c) The standard of review shall be whether the minor continues to have a mental disorder, whether further inpatient treatment is reasonably likely to be beneficial to the minor's mental disorder, or whether the placement in the facility represents the least restrictive, most appropriate available setting, within the constraints of reasonably available services, facilities, resources, and financial support, in which to treat the minor.

(d) The review shall take place within five days of the request.

(e) At the review, the minor shall have the right to be present, to be assisted by the advocate, and to question persons recommending inpatient treatment. If the minor is unwilling to attend, the review shall be held in his or her absence with the advocate representing the minor.

(f) The location of the independent clinical review shall be compatible with, and least disruptive of, the treatment being provided to the minor. Independent clinical reviews shall be conducted at the facility where the minor is treated. The review shall be situated in a location which ensures privacy.

(g) The independent clinical review shall be held in an informal setting so as to minimize the anxiety of both parents and minors and promote cooperation and communication among all interested parties. All parties shall make a reasonable effort to speak in terms the minor can understand and shall explain any terminology with which he or she may not be familiar.

(h) The review may be closed to anyone other than the minor, his or her parents or legal guardian, a representative of the facility, the minor's advocate, the psychiatrist conducting the review and the person presenting information in favor of, or opposition to, the inpatient treatment. The person conducting the review shall have discretion to limit the number of participants and shall keep participants to the minimum time necessary to relate the needed information.

(i) No party shall have legal representation in the review process.

(j) If any of the parties to the independent clinical review do not comprehend the language used at the independent clinical review, it shall be the responsibility of the psychiatrist conducting the independent clinical review to retain an interpreter.
(Added by Stats.1989, c. 1375, § 5.)

§ 6002.35. Record of review; decision

(a) It shall be the responsibility of the psychiatrist conducting the independent clinical review to keep a record of the proceeding.

(b) After considering all the clinical information, the psychiatrist conducting the review shall render a binding decision. If he or she determines that further inpatient treatment is reasonably likely to be beneficial to the minor's disorder and placement in the facility represents the least restrictive, most appropriate available setting in which to treat the minor, the minor's inpatient treatment shall be authorized.

(c) If the psychiatrist conducting the review determines that the admission criteria have been met, this determination shall terminate when the minor is discharged from the facility.

(d) If the psychiatrist conducting the clinical review determines that further inpatient treatment in the facility is not reasonably likely

to be beneficial to the minor's mental disorder or does not represent the least restrictive, most appropriate available setting in which to treat the minor, the minor shall be released from the facility to a custodial parent or guardian on the same day the determination was made. Except as provided in Section 43.92 of the Civil Code, upon the minor's release, neither the attending psychiatrist, any licensed health professional providing treatment to the minor in the facility, the psychiatrist who releases the minor pursuant to this section, nor the facility in which the minor was admitted or treated shall be civilly or criminally liable for any conduct of the released minor, a parent, legal guardian, or other persons entitled to custody of the minor.
(Added by Stats.1989, c. 1375, § 6.)

§ 6002.40. Treatment costs covered by private insurer or county; legislative intent; monitoring compliance; treatment guidelines

(a) For any insurance contracts entered into after January 1, 1990, where any private insurer, certified medical plan, or private health service plan is liable to pay or reimburse a professional provider or institutional provider for the costs of medically necessary mental health services provided to the patient, the costs of the clinical review required by Sections 6002.10 to 6002.40, inclusive, including, but not limited to, the costs of the interpreter, if any, and the costs of the patients' rights advocate, shall be borne by the insurer, certified medical plan, or the health service plan. Payments to providers for the costs of the independent clinical review shall be made promptly.

For Medi–Cal eligible patients placed in these private facilities, the costs of the clinical review required by Sections 6002.10 to 6002.40, inclusive, including the costs of the patients rights advocate, shall be borne by the county.

(b) The Legislature intends that Sections 6002.10 to 6002.40, inclusive, affect only the rights of minors confined in private mental health facilities on the consent of their parents or guardians, where the costs of treatment are paid or reimbursed by a private insurer or private health service plan.

(c) Mental health facilities shall summarize on an annual basis, information including, but not limited to, the number of minors admitted by diagnosis, length of stay, and source of payment, the number of requests for an independent clinical review by diagnosis, source of payment, and outcome of the independent clinical review and submit this information to the State Department of Mental Health. This annual summary shall be made available by the facility to the State Department of Health Services which shall monitor compliance of this section during an inspection of the facility pursuant to Sections 1278 and 1279 of the Health and Safety Code.

(d) The State Department of Mental Health, in consultation with appropriate organizations, shall develop nonmandatory guidelines for treatment of mental disorders to be utilized pursuant to this act by January 1, 1991.
(Added by Stats.1989, c. 1375, § 6.5. Amended by Stats.1992, c. 711 (A.B.2874), § 147, eff. Sept. 15, 1992; Stats.1992, c. 713 (A.B.3564), § 48, eff. Sept. 15, 1992.)

§ 6003. County psychiatric hospital

As used in this article, "county psychiatric hospital" means the hospital, ward, or facility provided by the county pursuant to the provisions of Section 7100.
(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6003.1. County psychiatric health facility

As used in this article, county psychiatric health facility means a 24–hour acute care facility provided by the county pursuant to the provisions in Sections 5404 and 7100.
(Added by Stats.1978, c. 1234, p. 3988, § 6. Amended by Stats.1996, c. 245 (A.B.2616), § 3, eff. July 22, 1996.)

§ 6003.2. County psychiatric hospital interchangeable with psychiatric health facility

Wherever in this article the term "county psychiatric hospital" appears, such term shall be interchangeable with the term "psychiatric health facility."
(Added by Stats.1978, c. 1234, p. 3988, § 7.)

§ 6004. County psychiatric hospital; persons eligible for admission

The superintendent or person in charge of the county psychiatric hospital may receive, care for, or treat in the hospital any person who voluntarily makes a written application to the superintendent or person in charge thereof for admission into the hospital for care, treatment, or observation, and who is a suitable person for care, treatment, or observation, and who in the case of an adult person is in such condition of mind, at the time of making application for admission, as to render him competent to make such application. In the case of a minor person, the application shall be made by his parents, or by the parent, guardian, or other person entitled to his custody. A conservatee, with a conservator of the person, or person and estate, appointed under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5, with the right as specified by court order under Section 5358 to place his conservatee, may be admitted upon written application by his conservator.
(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1444, § 47.2, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1970, c. 516, p. 1007, § 10.)

§ 6005. Departure from county psychiatric hospital

A voluntary adult patient may leave the hospital or institution at any time by giving notice of his desire to leave to any member of the hospital staff and completing normal hospitalization departure procedures. A conservatee may leave in a like manner if notice is given by his conservator.

A minor person who is a voluntary patient may leave the hospital or institution after completing normal hospitalization departure procedures after notice is given to the superintendent or person in charge by the parents, or the parent, guardian, or other person entitled to the custody of the minor, of their desire to remove him from the hospital.
(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6006. Rights of voluntary patients

A person admitted as a voluntary patient to a state hospital, a private mental institution, or a county psychiatric hospital shall have the following rights in addition to the right to leave such hospital as specified in this chapter:

(a) He shall receive such care and treatment as his condition requires for the full period that he is a patient;

(b) He shall have the full patient rights specified in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of this code.
(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2676, § 87, operative July 1, 1969.)

§ 6007. Detention in private institution after July 1, 1969; time; evaluation; release or further proceedings

Any person detained as of June 30, 1969, in a private institution, pursuant to former Sections 6030 to 6033, inclusive, as they read immediately preceding July 1, 1969, on the certification of one physician, may be detained after July 1, 1969, for a period no longer than 90 days.

Any person detained as of June 30, 1969, in a private institution, pursuant to such sections, on the certification of two physicians, may be detained after July 1, 1969, for a period no longer than 180 days.

Any person detained pursuant to this section after July 1, 1969, shall be evaluated by the facility designated by the county and approved by the State Department of Mental Health pursuant to

Section 5150 as a facility for 72–hour treatment and evaluation. Such evaluation shall be made at the request of the person in charge of the private institution in which the person is detained or by one of the physicians who signed the certificate. If in the opinion of the professional person in charge of the evaluation and treatment facility or his designee, the evaluation of the person can be made by such professional person or his designee at the private institution in which the person is detained, the person shall not be required to be evaluated at the evaluation and treatment facility, but shall be evaluated at the private institution to determine if the person is a danger to others, himself, or gravely disabled as a result of mental disorder.

Any person evaluated under this section shall be released from the private institution immediately upon completion of the evaluation if in the opinion of the professional person in charge of the evaluation and treatment facility, or his designee, the person evaluated is not a danger to others, or to himself, or gravely disabled as a result of mental disorder, unless the person agrees voluntarily to remain in the private institution.

If in the opinion of the professional person in charge of the facility or his designee, the person evaluated requires intensive treatment or recommendation for conservatorship, such professional person or his designee shall proceed under Article 4 (commencing with Section 5250) of Chapter 2, or under Chapter 3 (commencing with Section 5350), of Part 1 of Division 5.

(Added by Stats.1969, c. 722, p. 1445, § 48, eff. Aug. 8, 1969, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3358, § 416, operative July 1, 1973; Stats.1977, c. 1252, p. 4599, § 636, operative July 1, 1978.)

§ 6008. Admission of conservatee to United States government hospital; departure

For the purposes of this part, a person who is a conservatee with a conservator of the person or of the person and estate appointed under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 with the right as specified by court order under Section 5358 to place his conservatee in a hospital of the United States government, may be admitted to such a hospital upon written application made by his conservator. A conservatee so admitted to such a hospital may leave the hospital at any time after his conservator gives notice to a member of the hospital staff that the conservatee is leaving and normal hospitalization departure procedures are completed by the conservator or by the conservator and conservatee.

(Added by Stats.1969, c. 722, p. 1445, § 48.1, eff. Aug. 8, 1969, operative July 1, 1969. Amended by Stats.1970, c. 516, p. 1007, § 11.)

Part 2 JUDICIAL COMMITMENTS

Chapter 1 DEFINITIONS, CONSTRUCTION AND STANDARD FORMS

§ 6250. Persons subject to judicial commitment; effect on other laws; liberal construction

As used in this part, "persons subject to judicial commitment" means persons who may be judicially committed under this part as mentally disordered sex offenders pursuant to Article 1 (commencing with Section 6300), sexually violent predators pursuant to Article 4 (commencing with Section 6600), or mentally retarded persons pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of this part.

Nothing in this part shall be held to change or interfere with the provisions of the Penal Code and other laws relating to mentally disordered persons charged with crime or to the criminally insane.

This part shall be liberally construed so that, as far as possible and consistent with the rights of persons subject to commitment, those persons shall be treated, not as criminals, but as sick persons.

(Added by Stats.1969, c. 722, p. 1446, § 49.1, eff. Aug. 8, 1969, operative July 1, 1969. Amended by Stats.1970, c. 1502, p. 2987, § 6; Stats.1979, c. 373, p. 1399, § 368; Stats. 1995, c. 762 (S.B.1143), § 2; Stats.1995, c. 763 (A.B.888), § 2.)

§ 6251. Petition; form

Wherever, on the basis of a petition, provision is made in this code for issuing and delivering an order for examination and detention directing that a person be apprehended and taken before a judge of a superior court for a hearing and examination on an allegation of being a person subject to judicial commitment, the petition shall be in substantially the following form:

In the Superior Court of the State of California
For the County of _____

The People)
For the Best Interest and Protection of)
_____)
as a _____) Petition
and Concerning _____)
_____ and)
_____)
Respondents)

_____, residing at _____ (tel. _____), being duly sworn deposes and says: That there is now in the county in the City or Town of _____ a person named _____, who resides at _____, and who is believed to be a _____ That the person is _____ years of age; that _____ the person is _____ (sex) and that _____ the person is ____ (single, married, widowed, or divorced); and that _____ occupation is _____ .

That the facts because of which petitioner believes that the person is a _____ are as follows: That ___ the person, at _____ in the county, on the _____ day of _____ , 20 , _____
That petitioner's interest in and case is_____
_____
That petitioner believes that said person is _____ as defined in Section _____ .

That the persons responsible for the care, support, and maintenance of the _____ , and their relationship to the person are, so far as known to the petitioner, as follows: (Give names, addresses, and relationship of persons named as respondents) Wherefore, petitioner prays that examination be made to determine the state of the mental health of _____ , alleged to be _____ , and that such measures be taken for the best interest and protection of said _____ , in respect to the person's supervision, care and treatment, as may be necessary and provided by law.

_____
Petitioner

Subscribed and sworn to before me this ____ day of _____ , 20 .
_____, Clerk of the Court
By _____ Deputy

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2679, § 93, operative July 1, 1969; Stats.2002, c. 784 (S.B.1316), § 619.)

§ 6252. Order for examination or detention; form

Wherever provision is made in this code for a judge of a superior court to issue and deliver an order for examination or detention directing that a person be apprehended and taken before a judge of a superior court for a hearing and examination on an allegation of being a person subject to judicial commitment, the order for examination or detention shall be in substantially the following form:

The People)
For the Best Interest and Protection of)
. . . . .) Order
as a . . . . .) for
and Concerning . . . . .) Examination
. . . . . and) or
. . . . .) Detention
Respondents)

The People of the State of California . . . . . .
. . . . . .

(peace officer)

The petition for . . . . . having been presented this day to me, a Judge of the Superior Court in and for the County of . . . . . , State of California, from which it appears that there is now in this county, at . . . . . , a person by the name of . . . . . , who is a . . . . . .

And it satisfactorily appears to me that said person is sufficiently . . . . . that examination should be made and hearing held, if demanded, to determine the supervision, treatment, care or restraint, if any, necessary for his best interest and protection, and the protection of the people.

I do hereby appoint . . . . . and . . . . . as medical examiners to make a personal examination of . . . . . , the person alleged to be . . . . . ., and to report thereon to the court, pursuant to Section . . . . . of the Welfare and Institutions Code.

*Now, therefore, you are commanded to notify said . . . . . , to submit to an examination . . . . . on or before the . . . . day of . . . . . , that thereafter he may be taken before a judge of the superior court in this county for examination and hearing to determine the measures to be taken for the best interest and protection of said . . . . . , as a . . . . . , as provided by law.

*And it affirmatively appearing to me that said person is sufficiently . . . . . that he is likely to injure himself or others if not immediately hospitalized or detained, you are therefore commanded to forthwith detain said . . . . . , or cause him to be detained for examination and hearing, pending the further order of the judge, at . . . . . , and there be cared for in a humane manner as a . . . . . and provided with any medical treatment deemed necessary to his physical well–being.

*And it satisfactorily appearing to me that said person has failed or has refused to appear for examination when notified by order of this court, you are therefore commanded to forthwith detain said . . . . . or cause him to be detained for examination and hearing, pending the further order of the judge, at . . . . . , and there be cared for in a humane manner as a . . . . . .

I hereby direct that a copy of this order, together with a copy of the said petition be delivered to said person and his representative, if any, at the time of his notification; and I further direct that this order may be served at any hour of the night.

Witness my hand, this . . . . . day of . . . . . , 19 . . . . .

. . . . . .
Judge of the Superior Court

*Strike out when not applicable.

Return of Order

I hereby certify that I received the above order for examination or detention, and on the . . . . . day of . . . . . , 19 . . . . , served it by notifying and delivering to said . . . . . personally, and to his representatives, if any, to wit, ... , a copy of the order and of the petition,* or by apprehending said person and causing h . . to be detained for examination and hearing and for humane care as an alleged . . . . . at . . . . . ; until further ordered and directed by the judge.

*I hereby certify that prior to the service of the above order for detention and the apprehension of . . . . . I served notice on the person and his representative, if any, as required under Article 2 (commencing with Section 5200) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code.

Dated . . . . . , 19 . . . . .

. . . . . .
Signature of officer

*Strike out when not applicable.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2680, § 94, operative July 1, 1969.)

§ 6253. Certificate of medical examiners; form

Wherever provision is made in this code for court–appointed medical examiners to make and sign a certificate showing the facts of an examination in the case of a person alleged to be subject to judicial commitment, the certificate shall be in substantially the following form:

In the Superior Court of the State of California
for the County of . . . . . .

The People	)	
For the Best Interest and Protection of	)	
. . . . . ,	)	Certificate
as a . . . . . and	)	of Medical
Concerning . . . . . ,	)	Examiners
and . . . . . ,	)	)
Respondents	)	

We, Dr. . . . . and Dr. . . . . , medical examiners in the County of . . . . . , duly appointed and certified as such, do hereby certify under our hands that we have examined . . . . . , alleged to be a . . . . . , and have attended before a judge of said court at the hearing on the petition concerning said person, and have heard the testimony of all witnesses, and, as a result of the examination, have testified under oath before the court to the following facts concerning the alleged . . . . . .
Name . . . . . .
Address . . . . . .
Age . . . . . Sex . . . . . .
Occupation . . . . . Marital status . . . . . .
(Single, married, widowed, divorced)
Religious belief . . . . . .
Pertinent case history . . . . . .
. . . . . .
. . . . . .
General physical condition . . . . . .
. . . . . .
Present mental status . . . . . .
. . . . . .
. . . . . .
Laboratory reports (if any) . . . . . .
. . . . . .
Tentative diagnosis of mental health . . . . . .
. . . . . .
. . . . . .
Recommendation for disposition or supervision, treatment and care
. . . . . .
. . . . . .
Reasons for the recommendation . . . . . .
. . . . . .
. . . . . .
. . . . . .
Date . . . . . .

. . . . . .
Medical Examiner

. . . . . .
Medical Examiner

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6254. Order for care, hospitalization or commitment; form

Wherever provision is made in this code for an order of commitment by a superior court, the order of commitment shall be in substantially the following form:

In the Superior Court of the State of California
for the County of_____

The People	)	
For the Best Interest and	)	
Protection of _____	)	Order for Care,
as a _____,	)	Hospitalization
	)	or Commitment
and Concerning	)	
_____and	)	
_____, Respondents	)	

The petition dated _____, alleging that _____, having been presented to this court on the _____ day of ___, 19___, and an order of detention issued thereon by a judge of the superior court of this county, and a return of the said order:

And it further appearing that the provisions of Sections 6250 to 6254, inclusive, of the Welfare and Institutions Code have been complied with;

And it further appearing that Dr. _____ and Dr. _____, two regularly appointed and qualified medical examiners of this county, have made a personal examination of the alleged _____, and have made and signed the certificate of the medical examiners, which certificate is attached hereto and made a part hereof;

Now therefore, after examination and certificate made as aforesaid the court is satisfied and believes that _____ is a _____ and is so ___.

It is ordered, adjudged and decreed:

That _____ is a _____ and that __he

*(a) Be cared for and detained in _____, a county psychiatric hospital, a community mental health service, or a licensed sanitarium or hospital for the care of the mentally disordered until the further order of the court, or

*(b) Be cared for at _____, until the further order of the court, or

*(c) Be committed to the State Department of Mental Health for placement in a state hospital, or

*(d) Be committed to a facility of the Veterans Administration or other agency of the United States, to wit: _____ at _____.

It is further ordered and directed that _____ of this county, take, convey and deliver _____ to the proper authorities of the hospital or establishment designated herein to be cared for as provided by law.

Dated this _____ day of _____, 19___.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2682, § 95, operative July 1, 1969; Stats.1971, c. 1593, p. 3359, § 417, operative July 1, 1973; Stats.1977, c. 1252, p. 4600, § 637, operative July 1, 1978; Stats.1988, c. 113, § 22, eff. May 25, 1988, operative July 1, 1988.)

Chapter 2 COMMITMENT CLASSIFICATION

Application

Article 1, added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969, was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

§ 6300. Definitions

Section 6300 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under this section.

As used in this article, "mentally disordered sex offender" means any person who by reason of mental defect, disease, or disorder, is predisposed to the commission of sexual offenses to such a degree that he is dangerous to the health and safety of others. Wherever the term "sexual psychopath" is used in any code, such term shall be construed to refer to and mean a "mentally disordered sex offender."

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

Sections 3 and 4 of Stats.1981, c. 928, p. 3485, provide:

"Sec. 3.

Nothing in this act shall be construed to affect any person under commitment under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code prior to the effective date of this act. It is the Legislature's intent that persons committed as mentally disordered sex offenders and persons whose terms of commitment are extended under the provisions of Section 6316 of the Welfare and Institutions Code shall remain under these provisions until the commitments are terminated and the persons are returned to the court for resumption of the criminal proceedings.

"The Legislature finds and declares that the purposes of the mentally disordered sex offender commitment have been to provide adequate treatment of these offenders, adequate controls over these persons by isolating them from a free society, and to protect the public from repeated commission of sex crimes. In making the repeal of the mentally disordered sex offender commitment procedures prospective only, the Legislature finds and declares that it is necessary to retain persons under this commitment who committed their crimes before the effective date of this enactment in order to have proper control over these persons and to protect society against repeated commission of sex crimes and that other enactments in the 1979–80 Regular Session of the Legislature and the 1981–82 Regular Session of the Legislature would yield prison terms which would provide this protection to society without the need to retain the mentally disordered sex offender commitment.

"Sec. 4.

In repealing the mentally disordered sex offender commitment, the Legislature recognizes and declares that the commission of sex offenses is not in itself the product of mental diseases. It is the intent of the Legislature that persons convicted of a sex offense after the effective date of this section, who are believed to have a serious, substantial, and treatable mental illness, shall be transferred to a state hospital for treatment under the provisions of Section 2684 of the Penal Code."

§ 6300.1. Treatment by prayer

Section 6300.1 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

No person who is being treated by prayer in the practice of the religion of any well–recognized church, sect, denomination or organization, shall be ordered detained or committed under this chapter unless the court shall determine that he is or would likely become dangerous to himself or to the person or property of others, or unless being a minor, his parent or guardian having custody of his person shall consent to such detention or commitment.

(Added by Stats.1969, c. 722, p. 1446, § 49.2, eff. Aug. 8, 1969, operative July 1, 1969.)

§ 6300.2. Patient rights

Section 6300.2 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

Any person admitted to a state hospital as a mentally disordered sex offender shall have the full patient rights specified in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5.

(Added by Stats.1972, c. 574, p. 983, § 8.)

§ 6301. Application of article

Section 6301 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

This article shall not apply to any person sentenced to death. This article shall not apply to any person convicted of an offense the punishment for which may be death until after a sentence other than death has been imposed, at which time this article shall apply to such person and he may be certified to the superior court as provided in Section 6302.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1976, c. 1101, p. 4973, § 1.)

§ 6302. Certification for hearing and examination after conviction

Section 6302 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

(a) General provisions; failure to register under Penal Code § 290. When a person is convicted of any sex offense, the trial judge,

on his own motion, or on motion of the prosecuting attorney, or on application by affidavit by or on behalf of the defendant, if it appears to the satisfaction of the court that there is probable cause for believing such a person is a mentally disordered sex offender within the meaning of this chapter, may adjourn the proceeding or suspend the sentence, as the case may be, and may certify the person for hearing and examination by the superior court of the county to determine whether the person is a mentally disordered sex offender within the meaning of this article.

As used in this section the term "sex offense" means any offense for which registration is required by Section 290 of the Penal Code; or any felony or misdemeanor which is shown by clear proof or the stipulation of the defendant to have been committed primarily for purposes of sexual arousal or gratification.

When an affidavit is filed under (a) it shall be substantially in the form specified for the affidavit in Section 6251 of this code. The title and body of the affidavit shall refer to such person as "an alleged mentally disordered sex offender" and shall state fully the facts upon which the allegation that the person is a mentally disordered sex offender is based. If the person is then before the court or is in custody, the court may order that the person be detained in a place of safety until the issue and service of an order for examination and detention as provided by this article.

(b) Child under 14; misdemeanor. When a person is convicted of a sex offense involving a child under 14 years of age and it is a misdemeanor, and the person has been previously convicted of a sex offense in this or any other state, the court shall adjourn the proceeding or suspend the sentence, as the case may be, and shall certify the person for hearing and examination by the superior court of the county to determine whether the person is a mentally disordered sex offender within the meaning of this article.

(c) Child under 14; felony. When a person is convicted of a sex offense involving a child under 14 years of age and it is a felony, the court shall adjourn the proceeding or suspend the sentence, as the case may be, and shall certify the person for hearing and examination by the superior court of the county to determine whether the person is a mentally disordered sex offender within the meaning of this article.

(d) Certification; statement. When the court certifies the person for hearing and examination by the superior court of the county to determine whether the person is a mentally disordered sex offender, the court shall transmit to the superior court its certification to that effect, accompanied by a statement of the court's reasons for finding that there is probable cause for believing such person is a mentally disordered sex offender within the meaning of this article in cases certified under (a), or a statement of the facts making such certification mandatory under (b) or (c).

The judge or justice presiding in such court, whenever it is deemed necessary or advisable, may issue and deliver to some peace officer for service, an order directing that the person be apprehended and taken before a judge of the superior court for a hearing and examination to determine whether the person is a mentally disordered sex offender. The officer shall thereupon apprehend and detain the person until a hearing and examination can be had. At the time of the apprehension a copy of the affidavit if one was filed, the certification, accompanied by the court's statement, and the warrant shall be personally delivered to the person and copies thereof shall also be delivered to the superior court to which the person was certified and to the district attorney of the county.

The order for examination and detention shall be substantially in the form provided by Section 6252 of this code.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1976, c. 1101, p. 4973, § 2.)

§ 6303. Service of notice; form

Section 6303 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

At the time of service of the petition and order for examination or detention, the officer making the service shall also deliver to each person served a copy of a notice which shall read substantially as follows:

The petition which accompanies this notice has been filed in the Superior Court in and for the County of . . . . . , alleging that . . . . . is a . . . . . .

*. . . . . is notified to present himself at the time and place designated in the attached order to submit to an examination into the state of his mental health. He is permitted to be accompanied by one or more of his relatives or friends to the place of examination. If he fails or refuses to appear for such examination, the court may issue an order for his forthwith detention for such examination.

*. . . . . has been affirmatively alleged to be likely to injure himself or others if not immediately hospitalized or detained. The court has therefore issued the attached order for detention and for examination and hearing before the court. . . . . has the right to a hearing, to bring in witnesses and to have compulsory process therefor, and to be represented by an attorney.

If . . . . . or a relative, friend, counsel or representative desires to be heard by the court, he must within four days after service of this notice file a request for a hearing with the clerk of the Superior Court in and for the County of . . . .

*Strike out when not applicable.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6304. Certification; form

Section 6304 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

Whenever a person is certified to the superior court for hearing and examination under Section 6302 the certification may be made in substantially the following form:

(Title of court and cause)

Order Adjoining Proceedings and Certifying Alleged Mentally Disordered Sex Offender to the Superior Court

Upon the court's own motion, the motion of the prosecuting attorney, application by or on behalf of the defendant (strike the conditions not applicable), it appearing to the satisfaction of the court that the above–named defendant has been convicted of a criminal offense, to wit, violation of . . . . . of the State of California, and that there is probable cause for believing that said defendant is a mentally disordered sex offender within the meaning of Article 1 of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code of the State of California, as amended, in that he is a person who by reason of mental defect, disease, or disorder, is predisposed to the commission of sexual offenses to such a degree that he is dangerous to the health and safety of others.

Now, therefore, the above proceeding is adjourned and it is hereby ordered that the above–named defendant is certified to the Superior Court of the State of California, in and for the County of . . . . . for hearing and examination by said court to determine whether said defendant is a mentally disordered sex offender within the meaning of said Article 1 of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code of the State of California, as amended. The above–named defendant shall be taken before said court, as provided in Section 6305 of said code, on the . . . . . day of . . . . . , 19. . . . , at the hour of . . . . . .* A copy of this certification of said defendant to said superior court shall be delivered to said defendant.

Dated this . . . . . day of . . . . . , 19. . .

. . . . . .
Judge

*This sentence may be included if such date and hour have been set by the superior court upon the request of the certifying judge.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6305. Advice as to allegation and rights; time and place of hearing; notice; attorney

Section 6305 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

The person certified or alleged to be a mentally disordered sex offender shall be taken before a judge of the superior court of the county. The judge shall then inform him that he is certified or alleged to be a mentally disordered sex offender, and inform him of his rights to make a reply and to produce witnesses in relation thereto. The judge shall by order fix such time and place for the hearing and examination in open court as will give reasonable opportunity for the filing of the probation officer's report as provided in Section 6306, and for the production and examination of witnesses. If, however, the person is too ill to appear in court, or if appearance in court would be detrimental to the mental or physical health of the person, the judge may hold the hearing at the bedside of the person. The order shall be entered at length in the minute book of the court or shall be signed by the judge and filed, and a certified copy thereof served on the person. The judge shall order that notice of the apprehension of the person and of the hearing of mentally disordered sex offender be served on the district attorney of the county and on such relatives of the person known to be residing in the county as the judge deems necessary or proper.

If the alleged mentally disordered sex offender has no attorney, an attorney shall be appointed to represent the person in the manner prescribed by Section 6314. In a county where there is no public defender, the court shall fix the compensation to be paid by the county for such services if the court determines that the person is not financially able to employ counsel.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1976, c. 1101, p. 4974, § 2.5.)

§ 6306. Probation officer; reference; report

Section 6306 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

The court shall refer the matter to the probation officer, along with a copy of the certification accompanied by the certifying court's statement, and the name and address of each psychiatrist or clinical psychologist appointed pursuant to Section 6307, to investigate and report to the court within a specified time, upon the circumstances surrounding the crime and the prior record and history of the person. The report shall include the criminal record, if any, of the person, obtained from the State Bureau of Criminal Identification and Investigation. The probation officer shall furnish to the psychiatrists and clinical psychologists pertinent information concerning the circumstances surrounding the crime and the prior record and history of the person.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1970, c. 516, p. 1007, § 12; Stats.1980, c. 1206, p. 4067, § 3.)

§ 6307. Appointment of psychologists or psychiatrists; contest of commitment

Section 6307 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

The judge shall appoint not less than two nor more than three certified clinical psychologists, each of whom shall have a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis of emotional and mental disorders, or psychiatrists, each of whom shall be a holder of a valid and unrevoked physician's and surgeon's certificate and have directed his professional practice primarily to the diagnosis and treatment of mental and nervous disorders for a period of not less than five years to make a personal examination of the alleged mentally disordered sex offender, directed toward ascertaining whether the person is a mentally disordered sex offender.

If the proposed commitment is contested by either the defendant or the people, one of the clinical psychologists or psychiatrists so appointed may be designated by the defendant, and one by the people.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1970, c. 685, p. 1313, § 1; Stats.1976, c. 1101, p. 4975, § 3; Stats.1978, c. 391, p. 1242, § 3.)

§ 6308. Psychiatrists and psychologists; report and testimony

Section 6308 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

Each psychiatrist or psychologist so appointed shall file with the court a separate written report of the result of his examination, together with his conclusions and recommendations and his opinion as to whether or not the person would benefit by care and treatment in a state hospital. At the hearing each psychiatrist or psychologist shall hear the testimony of all witnesses, and shall testify as to the result of his examination, and to any other pertinent facts within his knowledge, unless the person upon the advice of counsel waives the presence of the psychiatrists or psychologist and it is stipulated that their respective reports may be received in evidence.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1968, c. 1206, p. 2287, § 4, operative July 1, 1969; Stats.1976, c. 1101, p. 4975, § 4.)

§ 6309. Examination of psychiatrists or psychologists

Section 6309 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

Any psychiatrist or psychologist so appointed by the court may be called by either party to the proceeding or by the court itself and when so called shall be subject to all legal objections as to competency and bias and as to qualification as an expert. When called by the court, or by either party to the proceeding, the court may examine the psychiatrist or psychologist, as deemed necessary, but either party shall have the same right to object to the questions asked by the court and the evidence adduced as though the psychiatrist or psychologist were a witness for the adverse party. When the psychiatrist is called and examined by the court the parties may cross–examine him in the order directed by the court. When called by either party to the proceeding the adverse party may examine him the same as in the case of any other witness called by such party.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1976, c. 1101, p. 4976, § 5.)

§ 6310. Fees of psychiatrists or psychologists

Section 6310 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

The psychiatrists or psychologists so appointed by the court shall be allowed such fees not exceeding one hundred fifty dollars ($150) per day, prorated by the court when services are rendered for less than a full day. The fees allowed shall be paid by the county in which the hearing is held.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1969, c. 1140, p. 2209, § 1; Stats.1975, c. 926, p. 2043, § 1; Stats.1976, c. 1101, p. 4976, § 6.)

§ 6311. Other expert evidence

Section 6311 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

The provisions of this article relating to psychiatrists appointed by the court shall not be deemed or construed to prevent any party to a proceeding under this article from producing any other expert evidence as to the mental condition of the alleged mentally disordered sex offender.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6312. Examination of other witnesses

Section 6312 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

The judge shall also cause to be examined as a witness any other person whom he believes to have knowledge of the mental condition of the alleged mentally disordered sex offender, or of the financial condition of the alleged mentally disordered sex offender and of any person liable for his support.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6313. Attendance of witnesses; fees and expenses

Section 6313 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

The judge may, for any hearing, order the clerk of the court to issue subpoenas and compel the attendance of witnesses from any place within the boundaries of this state, as provided by law for the trial of a criminal case.

All witnesses, other than psychiatrists or psychologists appointed by the court, attending a hearing upon a subpoena issued under this section shall be entitled to the same fees and expenses as in criminal cases, to be paid upon the same conditions and in like manner.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1976, c. 1101, p. 4976, § 7.)

§ 6314. Presence at hearing; attorney; public defender

Section 6314 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

The alleged mentally disordered sex offender shall be present at the hearing; and if he has no attorney, the judge shall appoint the public defender or other counsel to represent him unless the defendant affirmatively, knowingly and intelligently demands to act as his own attorney.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1976, c. 1101, p. 4976, § 8.)

§ 6315. Hearing; findings; return to original court

Section 6315 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

If, upon the hearing, the person is found by the superior court not to be a mentally disordered sex offender, the superior court shall return the person to the court in which the case originated for such disposition as that court may deem necessary and proper.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1970, c. 685, p. 1313, § 2.)

§ 6316. Return to criminal court for further disposition or commitment to hospital or other facility for care and treatment

Section 6316 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

(a)(1) If, after examination and hearing, the court finds that the person is a mentally disordered sex offender and that the person could benefit by treatment in a state hospital, or other treatment facility the court in its discretion has the alternative to return the person to the criminal court for further disposition, or may make an order committing the person to the department for confinement in a state hospital, or may commit the person to the county mental health director for confinement in an appropriate public or private treatment facility, approved by such director or may place the person on outpatient status under Title 15 (commencing with Section 1600) of Part 2 of the Penal Code. A copy of such commitment shall be personally served upon such person within five days after the making of such order.

If after examination and hearing, the court finds that the person is a mentally disordered sex offender but will not benefit by care or treatment in a state hospital or other treatment facility the court shall then cause the person to be returned to the court in which the criminal charge was tried to await further action with reference to such criminal charge. Such court shall resume the proceedings and shall impose sentence or make such other suitable disposition of the case as the court deems necessary.

The court shall transmit a copy of its order to the county mental health director or a designee and to the Director of Mental Health in all cases where a person is found to be a mentally disordered sex offender.

(2) Prior to making such order, the court shall order the county mental health director or a designee to evaluate the person and to submit to the court within 15 judicial days of such order a written recommendation as to whether the person should be committed to a state hospital or to another treatment facility approved by the county mental health director or be placed on outpatient status under the provisions of Title 15 (commencing with Section 1600) of Part 2 of the Penal Code. No such person shall be admitted to a state hospital or other treatment facility or placed on outpatient status without having been evaluated by the county mental health director or a designee.

(3) If the person is committed or transferred to a state hospital pursuant to this article, the committing court may, upon receiving the written recommendation of the medical director of the state hospital and the county mental health director that the person be transferred to a public or private treatment facility approved by the county mental health director, order the person transferred to such facility. If the person is committed or transferred to a public or private treatment facility approved by the county mental health director, the committing court may, upon receiving the written recommendation of the county mental health director or a designee, transfer the person to a state hospital or to another public or private treatment facility approved by the county mental health director. Where either the defendant, or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At such hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards used in conducting probation revocation hearings pursuant to Section 1203.2 of the Penal Code.

Prior to making an order for transfer under this section, the court shall notify the person, the prosecuting attorney, attorney of record for the person, and the county mental health director or a designee.

(b) During the time the person is confined in a state hospital or other treatment facility as an inpatient under the provisions of this article, the medical director of the facility shall, at six–month intervals, submit a report in writing to the court, and the county mental health director of the county of commitment or a designee concerning the person's progress toward recovery. The court shall supply a copy of the report to the prosecutor and the defense attorney.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1970, c. 685, p. 1313, § 3; Stats.1971, c. 1593, p. 3360, § 418, operative July 1, 1973; Stats.1975, c. 1274, p. 3399, § 9; Stats.1976, c. 1101, p. 4976, § 9; Stats.1977, c. 164, p. 633, § 1, eff. June 29, 1977, operative July 1, 1977; Stats.1977, c. 691, p. 2232, § 5.5; Stats.1978, c. 1291, p. 4229, § 5; Stats.1980, c. 547, p. 1525, § 19.)

§ 6316.1. Maximum term of commitment; notice; hearing; statement

Section 6316.1 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

(a) In the case of any person found to be a mentally disordered sex offender who committed a felony on or after July 1, 1977, the court shall state in the commitment order the maximum term of commitment, and the person may not be kept in actual custody longer

than the maximum term of commitment, except as provided in Section 6316.2. For the purposes of this section, "maximum term of commitment" shall mean the longest term of imprisonment which could have been imposed for the offense or offenses of which the defendant was convicted, including the upper term of the base offense and any additional terms for enhancements and consecutive sentences which could have been imposed less any applicable credits as defined by Section 2900.5 of the Penal Code and disregarding any credits which could have been earned under Sections 2930 to 2932, inclusive, of the Penal Code.

(b) In the case of a person found to be a mentally disordered sex offender who committed a felony prior to July 1, 1977, who could have been sentenced under Section 1168 or 1170 of the Penal Code if the offense were committed after July 1, 1977, the Board of Prison Terms shall determine the maximum term of commitment which could have been imposed under subdivision (a), and the person may not be kept in actual custody longer than the maximum term of commitment, except as provided in Section 6316.2.

In fixing a term under this section, the board shall utilize the upper term of imprisonment which could have been imposed for the offense or offenses of which the defendant was convicted, increased by any additional terms which could have been imposed based on matters which were found to be true in the committing court. However, if at least two of the members of the board after reviewing the person's file determine that a longer term should be imposed for the reasons specified in Section 1170.2 of the Penal Code, a longer term may be imposed following the procedures and guidelines set forth in Section 1170.2 of the Penal Code, except that any hearings deemed necessary by the board shall be held before April 1, 1978. Within 90 days of July 1, 1977, or of the date the person is received by the State Department of Mental Health, whichever is later, the Board of Prison Terms shall provide each person committed pursuant to Section 6316 with the determination of his maximum term of commitment or shall notify such person that he will be scheduled for a hearing to determine his term.

Within 20 days following the determination of the maximum term of commitment the board shall provide the person committed, the prosecuting attorney, the committing court, and the State Department of Mental Health with a written statement setting forth the maximum term of commitment, the calculations, the statements, the recommendations, and any other materials considered in determining the maximum term.

(c) In the case of a person found to be a mentally disordered sex offender who committed a misdemeanor, whether before or after July 1, 1977, the maximum term of commitment shall be the longest term of county jail confinement which could have been imposed for the offense or offenses of which the defendant was convicted, and the person may not be kept in actual custody longer than this maximum term. The provisions of this subdivision shall be applied retroactively.

(d) Nothing in this section limits the power of the State Department of Mental Health or of the committing court to release the person, conditionally or otherwise, for any period of time allowed by any other provision of law.

(Added by Stats.1977, c. 164, p. 633, § 2, eff. June 29, 1977, operative July 1, 1977. Amended by Stats.1979, c. 373, p. 1399, § 369; Stats.1979, c. 255, p. 570, § 63.)

§ 6316.2. Commitment beyond maximum term; procedure

Section 6316.2 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

(a) A person may be committed beyond the term prescribed by Section 6316.1 only under the procedure set forth in this section and only if such person meets all of the following:

(1) The "sex offense" as defined in subdivision (a) of Section 6302 of which the person has been convicted is a felony, whether committed before or after July 1, 1977, or is a misdemeanor which was committed before July 1, 1977.

(2) Suffers from a mental disease, defect, or disorder, and as a result of such mental disease, defect, or disorder, is predisposed to the commission of sexual offenses to such a degree that he presents a substantial danger of bodily harm to others.

(b) If during a commitment under this part, the Director of Mental Health has good cause to believe that a patient is a person described in subdivision (a), the director may submit such supporting evaluations and case file to the prosecuting attorney who may file a petition for extended commitment in the superior court which issued the original commitment. Such petition shall be filed no later than 90 days before the expiration of the original commitment. Such petition shall state the reasons for the extended commitment, with accompanying affidavits specifying the factual basis for believing that the person meets each of the requirements set forth in subdivision (a).

(c) At the time of filing a petition, the court shall advise the patient named in the petition of his right to be represented by an attorney and of his right to a jury trial. The rules of discovery in criminal cases shall apply.

(d) The court shall conduct a hearing on the petition for extended commitment. The trial shall be by jury unless waived by both the patient and the prosecuting attorney. The trial shall commence no later than 30 days prior to the time the patient would otherwise have been released by the State Department of Mental Health.

(e) The patient shall be entitled to the rights guaranteed under the Federal and State Constitutions for criminal proceedings. All proceedings shall be in accordance with applicable constitutional guarantees. The State Controller shall reimburse the counties for all expenses of transportation, care and custody of the patient and all trial and related costs. The state shall be represented by the Attorney General or the district attorney with the consent of the Attorney General. If the patient is indigent, the State Public Defender shall be appointed. The State Public Defender may provide for representation of the patient in any manner authorized by Section 15402 of the Government Code. Appointment of necessary psychologists or psychiatrists shall be made in accordance with this article and Penal Code and Evidence Code provisions applicable to criminal defendants who have entered pleas of not guilty by reason of insanity or asserted diminished capacity defenses.

(f) If the court or jury finds that the patient is a person described in subdivision (a), the court may order the patient committed to the State Department of Mental Health in a treatment facility. A commitment or a recommitment under Section 6316.1 shall be for a period of two years from the date of termination of the previous commitment.

(g) A person committed under this section to the State Department of Mental Health shall be eligible for outpatient release as provided in this article.

(h) Prior to termination of a commitment under this section, a petition for recommitment may be filed to determine whether the person remains a person described in subdivision (a). Such recommitment proceeding shall be conducted in accordance with the provisions of this article.

(i) Any commitment to the State Department of Mental Health under this article places an affirmative obligation on the department to provide treatment for the underlying causes of the person's mental disorder.

(j) Amenability to treatment is not required for a finding that any person is a person as described in subdivision (a), nor is it required for treatment of such person. Treatment programs need only be made available to such person. Treatment does not mean that the treatment be successful or potentially successful, nor does it mean that the person must recognize his or her problem and willingly participate in the treatment program.

(k) The person committed pursuant to this section shall be confined in a state hospital unless released as an outpatient as provided in Section 6325.1. The Director of Mental Health may, with the consent of the Director of Corrections, transfer the person to a treatment unit in the Department of Corrections for confinement and treatment if the person is not amenable for treatment in existing hospital programs or is in need of stricter security and custody measures than are available within the state hospitals. The treatment unit shall be designated by the Director of Corrections. A person transferred under this section shall be entitled to a hearing by the State Department of Mental Health to determine whether he may be confined and treated in a state hospital.

The person shall be entitled to be present at the hearing, to ask and answer questions, to speak on his own behalf, and to offer relevant evidence. The hearing shall be held before any transfer to the Department of Corrections unless the person is already in the custody of the Director of Corrections or the need for transfer becomes immediate making a hearing before transfer impractical.

Any person transferred to the Department of Corrections pursuant to this section shall be entitled to treatment of a kind and quality similar to that which he would receive if confined by the State Department of Mental Health. He shall be treated in a unit at a level of staffing that will enable him to receive the equivalent quality of care and therapy that would be received in a similar state hospital program.

(l) The provisions of Section 6327 shall apply to a commitment ordered pursuant to this section.

(Added by Stats.1977, c. 164, p. 634, § 3, eff. June 29, 1977, operative July 1, 1977. Amended by Stats.1978, c. 1036, p. 3198, § 1, eff. Sept. 25, 1978; Stats.1978, c. 1039, p. 3225, § 2; Stats.1979, c. 991, p. 3373, § 1; Stats.1979, c. 992, p. 3377, § 1, eff. Sept. 22, 1979; Stats.1979, c. 992, p. 3379, § 2, eff. Sept. 22, 1979, operative Jan. 1, 1980.)

§ 6318. Demand for trial; date; finding or verdict

Section 6318 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

If a person ordered under Section 6316 to be committed as a mentally disordered sex offender to the department for placement in a state hospital for care and treatment or to the county mental health director for placement in an appropriate facility, or any friend in his behalf, is dissatisfied with the order of the judge so committing him, he may, within 15 days after the making of such order, demand that the question of his being a mentally disordered sex offender be tried by a judge or by a jury in the superior court of the county in which he was committed. Thereupon the court shall set the case for hearing at a date, or shall cause a jury to be summoned and to be in attendance at a date stated, not less than five nor more than 10 days from the date of the demand for a court or jury trial. The court shall adjudge whether the person is a mentally disordered sex offender, or if it is a trial by jury the judge shall submit to the jury the question: Are you convinced to a moral certainty and beyond a reasonable doubt that the defendant is a mentally disordered sex offender?

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1970, c. 685, p. 1314, § 4; Stats.1975, c. 1274, p. 3400, §11; Stats.1976, c. 1101, p. 4977, § 11.)

§ 6319. Stay of proceedings

Section 6319 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

Proceedings under this article under the order for commitment to the department for placement in a state hospital or to a county mental health director for placement in an appropriate facility shall not be stayed, pending the proceedings for determining the question of whether the person is a mentally disordered sex offender by a judge or jury, except upon the order of a superior court judge, with provision made therein for such temporary care and custody of the person as the judge deems necessary. If the superior court judge, by the order granting the stay, commits the person to the custody of any person other than a peace officer, he may, by such order, require a bond for his appearance at the trial.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1975, c. 1274, p. 3400, § 12.)

§ 6320. Duties of district attorney

Section 6320 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

At the trial the petition and its allegations that the person is a mentally disordered sex offender shall be presented by the district attorney of the county.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6321. Trial; verdict; court order

Section 6321 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

The trial shall be had as provided by law for the trial of criminal causes, and if tried before a jury the person shall be discharged unless a verdict that he is a mentally disordered sex offender is found unanimously by the jury. If the judge adjudges or the verdict of the jury is that he is a mentally disordered sex offender the judge shall adjudge that fact and make an order similar to the original order for commitment to the department for placement in a state hospital or to a county mental health director for placement in an appropriate facility. The order committing the person to the department for placement in a state hospital or other facility shall be presented to the superintendent of the state hospital or other facility or other representative of the department to whom the person is committed.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1975, c. 1274, p. 3401, § 13; Stats.1976, c. 1101, p. 4978, § 12.)

§ 6322. Execution of writ; fees; expenses

Section 6322 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

The sheriff of any county wherein an order is made by the court committing a person for an indeterminate period to a state hospital or other facility or returning such person to the court, or any other peace officer designated by the court, shall execute the writ of commitment or order of return, and receive as compensation therefor such fees as are now or may hereafter be provided by law for the transportation of prisoners to the state prison, which shall be payable in the same manner.

The expense of transporting a person to a county facility or state hospital temporarily for an observation placement under this article and returning such person to the court is a charge upon the county in which the court is situated.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1975, c. 1274, p. 3401, § 14.)

§ 6323. Delivery of documents

Section 6323 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

Certified copies of the affidavit, certification from the trial court, order for examination or detention, order for hearing and examination, report of the probation officer and of the court–appointed psychiatrists, and the order of commitment for an indeterminate period shall be delivered to the person transporting the mentally disordered sex offender to the state hospital or other facility, and shall be delivered by that person to the officer in charge of the hospital or other facility.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1970, c. 685, p. 1314, § 5; Stats.1975, c. 1274, p. 3401, § 15.)

§ 6324. Applicable laws

Section 6324 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

The provisions of Section 4025 and of Article 4 (commencing with Section 7275) of Chapter 3 of Division 7 relative to the property and care and support of persons in state hospitals, the liability for such care and support, and the powers and duties of the State Department of Mental Health and all officers and employees thereof in connection therewith shall apply to persons committed to state hospitals or to other facilities pursuant to this article the same as if such persons were expressly referred to in Section 4025 and Article 4 (commencing with Section 7275) of Chapter 3 of Division 7.

(Formerly § 5516, added by Stats.1965, c. 391, p. 1651, § 5, eff. May 25, 1965. Amended by Stats.1967, c. 1620, p. 3863, § 6, eff. Aug. 30, 1967. Renumbered § 6324 and amended by Stats.1968, c. 1374, p. 2664, § 60, operative July 1, 1969; Stats.1973, c. 142, p. 423, § 79.4, eff. June 30, 1973, operative July 1, 1973; Stats.1975, c. 1274, p. 3401, § 16; Stats.1977, c. 1252, p. 4601, § 638, operative July 1, 1978.)

§ 6325. Certification as to recovery; return to court; probation; credit for hospitalization time

Section 6325 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

(a) Whenever a person who is committed to a state hospital or other treatment facility under the provisions of this article or placed on outpatient status under Title 15 (commencing with Section 1600) of Part 2 of the Penal Code has been treated to such an extent that in the opinion of the medical director of the state hospital or other facility or the outpatient treatment supervisor under Title 15 (commencing with Section 1600) of Part 2 of the Penal Code, the person will not benefit by further care and treatment and is not a danger to the health and safety of others, the medical director or person in charge of the facility or county mental health director or a designee where the person is on outpatient status, shall file with the committing court a certification of that opinion including therein a report, diagnosis, and recommendation concerning the persons's future care, supervision, or treatment.

(b) Whenever a person who is committed to a state hospital or other treatment facility under the provisions of this article or who is placed on outpatient status under Title 15 (commencing with Section 1600) of Part 2 of the Penal Code has not recovered, and in the opinion of the medical director of the state hospital or other facility or of the county mental health director where the patient is on outpatient status the person is still a danger to the health and safety of others, the director shall file with the committing court a certification of that opinion, including therein a report, diagnosis and recommendation concerning the person's future care, supervision or treatment.

(c) The court shall transmit a copy of the opinion certified under subdivision (a) or (b) to the county mental health director or a designee and shall give notice of the hearing date to the county mental health director or a designee and to the Director of Mental Health.

Upon the expiration of the time for making a motion pursuant to Section 6325.2, upon the denial of such motion, or upon the entry of a finding that the person is no longer a mentally disordered sex offender after a hearing pursuant to Section 6327, the committing court shall order the return of the person to the committing court. The committing court shall thereafter cause the person to be returned to the court in which the criminal charge was tried to await further action with reference to such criminal charge.

Such court shall resume the proceedings, upon the return of the person to the court, and after considering all the evidence before it may place the person on probation upon such terms as may be required to protect the public if the criminal charge permits such probation and the person is otherwise eligible for probation. In any case, where the person is sentenced on a criminal charge, the time the person spent under indeterminate commitment as a mentally disordered sex offender shall be credited by the court or community release board against such sentence. The court in which the criminal case was tried shall notify the county mental health director or a designee and the Director of Mental Health of the outcome of the criminal proceedings.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1975, c. 1274, p. 3402, § 17; Stats.1976, c. 1101, p. 4979, § 13.1; Stats.1978, c. 1291, p. 4230, § 7; Stats.1980, c. 547, p. 1529, § 21.)

§ 6325.1. Authority to place committed person on outpatient status

Section 6325.1 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

A person committed pursuant to Section 6316.2 may be placed on outpatient status as provided in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(Added by Stats.1980, c. 547, p. 1527, § 23.)

§ 6325.2. Motion for new examination; time; hearing; court order

Section 6325.2 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

When a person is returned to the committing court pursuant to Section 6325, either party may move for a new examination and hearing pursuant to Sections 6306 through 6318, inclusive, within five days of the person's arrival. The motion may be granted if the moving party shows by affidavit the existence of facts which establish that the opinion certified under subdivision (a) or (b) of Section 6325 was an abuse of discretion. Such hearing shall be set to commence within 30 days of the person's return to court. If the opinion certified was under subdivision (a) of Section 6325, and a new hearing is granted upon motion of the people, the person shall be entitled to be admitted to bail or released on his own recognizance in the manner provided by law for criminal cases. If, at the conclusion of a hearing pursuant to this section, the person is found to remain a mentally disordered sex offender who could benefit by treatment in the state hospital or other mental health facility, the court may direct that the previous order of commitment remain in full force and effect.

(Formerly § 6325.1, added by Stats.1976, c. 1101, p. 4979, § 13.5. Renumbered § 6325.2 and amended by Stats.1977, c. 691, p. 2233, § 8.)

§ 6325.3. Authority to place committed person on outpatient status

Section 6325.3 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

A person committed to a state hospital or other treatment facility under the provisions of Section 6316 or 6321 may be placed on outpatient status from such commitment as provided in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(Added by Stats.1980, c. 547, p. 1528, § 24.)

§ 6325.5. Certification of no recovery and continued menace; release upon probation or other court disposition

Section 6325.5 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

If the opinion so certified is under subdivision (b) of Section 6325, the person may not be released until such time as probation is granted or such other disposition as the court may deem necessary and proper is made of the case.

(Added by Stats.1973, c. 346, p. 770, § 1.)

§ 6327. Persons committed for indeterminate period; report; return to court; hearing; recommitment; subsequent hearings; recovery and return to criminal court

Section 6327 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

After a person has been committed to the State Department of Mental Health for placement in a state hospital or to a county mental health director for placement in a treatment facility as a mentally disordered sex offender and has been confined or released on outpatient status pursuant to Title 15 (commencing with Section 1600) of Part 2 of the Penal Code for a period of not less than six months from the date of the order of commitment, the committing court may upon its own motion or on motion by or on behalf of the person committed, require the medical director of the state hospital or other facility or the outpatient supervisor, as appropriate, to forward to the committing court and to the county mental health director or a designee, within 30 days an opinion under subdivision (a) or (b) of Section 6325, including therein a report, diagnosis, and recommendation concerning the person's future care, supervision, or treatment. After receipt of the report, the committing court may order the return of the person to the court for a hearing as to whether the person is still a mentally disordered sex offender within the meaning of this article.

The court shall give notice of the hearing date to the county mental health director or a designee and to the Director of Mental Health.

The hearing shall be conducted substantially in accordance with Sections 6306 to 6314, inclusive. If, after the hearing, the judge finds that the person has not recovered from the mental disorder and is still a danger to the health and safety of others, the judge shall order the person returned to the State Department of Mental Health or county mental health director under the prior order of commitment. The court shall transmit a copy of its order to the county mental health director or a designee and to the Director of Mental Health. A subsequent hearing may not be held under this section until the person has been confined or on outpatient status for an additional period of six months from the date of return to the department or county mental health director. If the court finds that the person has recovered from the mental disorder to such an extent that the person is no longer a danger to the health and safety of others, or that the person will not benefit by further care and treatment in the hospital or other facility and is not a danger to the health and safety of others, the committing court shall thereafter cause the person to be returned to the court in which the criminal charge was tried to await further action with reference to such criminal charge. The court in which the criminal charge was tried shall notify the county mental health director or a designee and the Director of Mental Health of the outcome of the criminal proceedings.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3362, § 420, operative July 1, 1973; Stats.1975, c. 1274, p. 3405, § 19; Stats.1976, c. 1101, p. 4980, § 15; Stats.1977, c. 1252, p. 4602, § 639, operative July 1, 1978; Stats.1979, c. 991, p. 3376, § 3; Stats.1980, c. 547, p. 1528, § 25.)

§ 6328. Privileges of persons confined

Section 6328 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

The superintendent of a state hospital or other facility may extend to any person confined therein pursuant to this article such of the privileges granted to other patients of the hospital or facility as are not incompatible with his detention or unreasonably conducive to his escape from custody.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1975, c. 1274, p. 3405, § 20.)

§ 6329. District attorney; appearance for people

Section 6329 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

The district attorney of the county may appear on behalf of the people at any of the hearings held pursuant to this article.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6330. Escape; punishment

Section 6330 was repealed by Stats.1981, c. 928, p. 3485, § 2. For continued application to certain sex offenders, see Historical and Statutory Notes under Welfare and Institutions Code § 6300.

Every person committed to a state hospital or state institution or other public or private mental health facility as a mentally disordered sex offender, who escapes from or who escapes while being conveyed to or from such county facility, state hospital or state institution, is punishable by imprisonment in the state prison; or in the county jail not to exceed one year.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1975, c. 1274, p. 3406, § 21; Stats.1976, c. 1139, p. 5174, § 345; Stats.1976, c. 1101, p. 5180, § 16.)

§ 6331. Operative effect of article; application to persons already committed; amendment of section

Article 1 was repealed by Stats.1981, c. 928, § 2. For continued application to certain sex offenders, see Historical Note under § 6300.

This article shall become inoperative the day after the election at which the electors adopt this section, except that the article shall continue to apply in all respects to those already committed under its provisions.

The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two–thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

(Added by Initiative Measure, approved by the people, June 8, 1982.)

§ 6332. Outpatient status; actual custody and credit toward maximum term of commitment or term of extended commitment; time spent in locked facilities

Article 1 was repealed by Stats.1981, c. 928, § 2. For continued application to certain sex offenders, see Historical Note under § 6300.

For a person committed as a mentally disordered sex offender, whose term of commitment has been extended pursuant to former Section 6316.2, and who is placed on outpatient status pursuant to Section 1604 of the Penal Code, time spent on outpatient status, except when placed in a locked facility at the direction of the outpatient supervisor, shall not count as actual custody and shall not be counted toward the person's maximum term of commitment or toward the person's term of extended commitment.

(Added by Stats. 1993–94, 1st Ex.Sess., c. 9 (S.B.39), § 3.)

Article 2 MENTALLY RETARDED PERSONS

§ 6500. Commitment of persons dangerous to self or others; expiration of commitment order; counsel; duty of district attorney or county counsel

On and after July 1, 1971, no mentally retarded person may be committed to the State Department of Developmental Services pursuant to this article, unless he or she is a danger to himself or herself, or others. For the purposes of this article, dangerousness to self or others shall be considered to include, but not be limited to, a finding of incompetence to stand trial pursuant to the provisions of Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code when the defendant has been charged with murder, mayhem, aggravated mayhem, a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, robbery perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, carjacking perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, a violation of subdivision (b) of Section 451 of the Penal Code, a violation of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 288 of the Penal Code, any of the following acts when committed by force,

violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person: a violation of paragraph (1) or (2) of subdivision (a) of Section 262 of the Penal Code, a violation of Section 264.1, 286, or 288a of the Penal Code, or a violation of subdivision (a) of Section 289 of the Penal Code; a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.3, 12308, 12309, or 12310 of the Penal Code, or if the defendant has been charged with a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person.

If the mentally retarded person is in the care or treatment of a state hospital, developmental center, or other facility at the time a petition for commitment is filed pursuant to this article, proof of a recent overt act while in the care and treatment of a state hospital, developmental center, or other facility is not required in order to find that the person is a danger to self or others.

Any order of commitment made pursuant to this article shall expire automatically one year after the order of commitment is made. This section shall not be construed to prohibit any party enumerated in Section 6502 from filing subsequent petitions for additional periods of commitment. In the event subsequent petitions are filed, the procedures followed shall be the same as with an initial petition for commitment.

In any proceedings conducted under the authority of this article, the alleged mentally retarded person shall be informed of his or her right to counsel by the court, and if the person does not have an attorney for the proceedings, the court shall immediately appoint the public defender or other attorney to represent him or her. The person shall pay the cost for the legal services if he or she is able to do so. At any judicial proceeding under the provisions of this article, allegations that a person is mentally retarded and a danger to himself or herself or to others shall be presented by the district attorney for the county unless the board of supervisors, by ordinance or resolution, delegates this authority to the county counsel.

(Formerly § 6500.1, added by Stats.1970, c. 351, p. 765, § 3. Amended by Stats.1971, c. 1593, p. 3363, § 421.1, operative July 1, 1973; Stats.1975, c. 694, p. 1651, § 27; Stats.1977, c. 1252, p. 4603, § 641, operative July 1, 1978; Stats.1977, c. 695, p. 2248, § 7; Stats.1978, c. 429, p. 1462, § 220. Renumbered § 6500 and amended by Stats.1978, c. 1319, p. 4316, § 2. Amended by Stats.1989, c. 897, § 47; Stats.1993, c. 610 (A.B.6), § 33, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 37, eff. Oct. 1, 1993; Stats.1994, c. 224 (S.B.1436), § 10; Stats.1996, c. 1075 (S.B.1444), § 20; Stats.1996, c. 1076 (S.B.1391), § 5.)

§ 6501. Persons charged with violent felonies; placement

If a person is charged with a violent felony, as described in Section 667.5 of the Penal Code, and the individual has been committed to the State Department of Developmental Services pursuant to Section 1370.1 of the Penal Code or Section 6500 for placement in a secure treatment facility, as described in subdivision (e) of Section 1370.1 of the Penal Code, the department shall give priority to placing the individual at Porterville Developmental Center prior to placing the individual at any other developmental center that has been designated as a secure treatment facility.

(Added by Stats.1999, c. 146 (A.B.1107), § 29, eff. July 22, 1999.)

§ 6502. Petition

A petition for the commitment of a mentally retarded person to the State Department of Developmental Services who has been found incompetent to stand trial pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code when the defendant has been charged with one or more of the offenses identified or described in Section 6500, may be filed in the superior court of the county that determined the question of mental competence of the defendant. All other petitions may be filed in the county in which that person is physically present. The following persons may request the person authorized to present allegations pursuant to Section 6500 to file a petition for commitment:

(a) The parent, guardian, conservator, or other person charged with the support of the mentally retarded person.

(b) The probation officer.

(c) The Youth Authority.

(d) Any person designated for that purpose by the judge of the court.

(e) The Director of Corrections.

(f) The regional center director or his or her designee.

The request shall state the petitioner's reasons for supposing the person to be eligible for admission thereto, and shall be verified by affidavit.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1969, c. 624, p. 1263, § 4; Stats.1971, c. 1593, p. 3364, § 423, operative July 1, 1973; Stats.1977, c. 1252, p. 4603, § 642, operative July 1, 1978; Stats.1978, c. 1319, p. 4317, § 4; Stats.1979, c. 730, p. 2537, § 150, operative Jan. 1, 1981; Stats.1992, c. 722 (S.B.485), § 30, eff. Sept. 15, 1992.)

§ 6503. Time and place of hearing

The court shall fix a time and place for the hearing of the petition. The time for the hearing shall be set no more than 60 days after the filing of the petition. The court may grant a continuance only upon a showing of good cause. The hearing may, in the discretion of the court, be held at any place which the court deems proper, and which will give opportunity for the production and examination of witnesses.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1980, c. 859, p. 2690, § 3.)

§ 6504. Notice of hearing

In all cases the court shall require due notice of the hearing of the petition to be given to the alleged mentally retarded person. Whenever a petition is filed, the court shall require such notice of the hearing of the petition as it deems proper to be given to any parent, guardian, conservator, or other person charged with the support of the person mentioned in the petition.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1978, c. 1319, p. 4317, § 5; Stats.1979, c. 730, p. 2537, § 151, operative Jan. 1, 1981.)

§ 6504.5. Examination; report

Wherever a petition is filed pursuant to this article, the court shall appoint the director of a regional center for the developmentally disabled established under Division 4.5 of this code, or the designee of the director, to examine the alleged mentally retarded person.

Within 15 judicial days after his or her appointment, the regional center director or designee shall submit to the court in writing a report containing his or her evaluation of the alleged mentally retarded person. The report shall contain a recommendation of a facility or facilities in which the alleged developmentally disabled person may be placed.

The report shall include a description of the least restrictive residential placement necessary to achieve the purposes of treatment. In determining the least restrictive residential placement, consideration shall be given to public safety. If placement into or out of a developmental center is recommended, the regional center director or designee simultaneously shall submit the report to the executive director of the developmental center or his or her designee. The executive director of the developmental center or his or her designee may, within 15 days of receiving the regional center report, submit to the court a written report evaluating the ability of the developmental center to achieve the purposes of treatment for this person and whether the developmental center placement can adequately provide the security measures or systems required to protect the public health and safety from the potential dangers posed by the person's known behaviors.

The reports prepared by the regional center director and

developmental center director, if applicable, shall also address suitable interim placements for the person as provided for in Section 6506.

(Added by Stats.1978, c. 1319, p. 4317, § 5.5. Amended by Stats.1996, c. 1076 (S.B.1391), § 6.)

§ 6505. Order for apprehension

Whenever the court considers it necessary or advisable, it may cause an order to issue for the apprehension and delivery to the court of the alleged mentally retarded person, and may have the order executed by any peace officer.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6506. Custody, care and treatment pending hearing; order of court; expiration

Pending the hearing, the court may order that the alleged dangerous mentally retarded person may be left in the charge of his or her parent, guardian, conservator, or other suitable person, or placed in a state hospital for the developmentally disabled, in the county psychiatric hospital, or in any other suitable placement as determined by the court. Prior to the issuance of an order under this section, the regional center and developmental center, if applicable, shall recommend to the court a suitable person or facility to care for the alleged mentally retarded person. The determination of a suitable person or facility shall be the least restrictive option that provides for the person's treatment needs and that has existing security systems or measures in place to adequately protect the public safety from any known dangers posed by the person. In determining whether the public safety will be adequately protected, the court shall make the finding required by subparagraph (D) of paragraph (1) of subdivision (a) of Section 1370.1 of the Penal Code.

Pending the hearing, the court may order that the person receive necessary habilitation, care, and treatment, including medical and dental treatment.

Orders made pursuant to this section shall expire at the time set for the hearing pursuant to Section 6503. If the court upon a showing of good cause grants a continuance of the hearing on the matter, it shall order that the person be detained pursuant to this section until the hearing on the petition is held.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1978, c. 1319, p. 4317, § 6; Stats.1979, c. 730, p. 2537, § 152, operative Jan. 1, 1981; Stats.1980, c. 859, p. 2690, § 4; Stats.1996, c. 1076 (S.B.1391), § 7.)

§ 6507. Witnesses

The court shall inquire into the condition or status of the alleged mentally retarded person. For this purpose it may by subpoena require the attendance before it of a physician who has made a special study of mental retardation and is qualified as a medical examiner, and of a clinical psychologist, or of two such physicians, or of two such psychologists, to examine the person and testify concerning his mentality. The court may also by subpoena require the attendance of such other persons as it deems advisable, to give evidence.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6508. Fees and expenses of psychologist, physician and witnesses

Each psychologist and physician shall receive for each attendance mentioned in Section 6507 the sum of five dollars ($5) for each person examined, together with his necessary actual expenses occasioned thereby, and other witnesses shall receive for such attendance such fees and expenses as the court in its discretion allows, if any, not exceeding the fees and expenses allowed by law in other cases in the superior court.

Any fees or traveling expenses payable to a psychologist, physician, or witness as provided in this section and all expenses connected with the execution of any process under the provisions of this article, which are not paid by the parent, guardian, conservator, or person charged with the support of the supposed mentally retarded person, shall be paid by the county treasurer of the county in which the person resides, upon the presentation to the treasurer of a certificate of the judge that the claimant is entitled thereto.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1979, c. 730, p. 2538, § 153, operative Jan. 1, 1981.)

§ 6509. Order of commitment; least restrictive placement; change of placement; hearings

(a) If the court finds that the person is mentally retarded, and that he or she is a danger to himself, herself, or to others, the court may make an order that the person be committed to the State Department of Developmental Services for suitable treatment and habilitation services. Suitable treatment and habilitation services is defined as the least restrictive residential placement necessary to achieve the purposes of treatment. Care and treatment of a person committed to the State Department of Developmental Services may include placement in any state hospital, developmental center, any licensed community care facility, as defined in Section 1504, or any health facility, as defined in Section 1250, or any other appropriate placement permitted by law. The court shall hold a hearing as to the available placement alternatives and consider the reports of the regional center director or designee and the developmental center director or designee submitted pursuant to Section 6504.5. After hearing all the evidence, the court shall order that the person be committed to that placement that the court finds to be the most appropriate alternative. If the court finds that release of the person can be made subject to conditions that the court deems proper and adequate for the protection and safety of others and the welfare of the person, the person shall be released subject to those conditions.

The court, however, may commit a mentally retarded person who is not a resident of this state under Section 4460 for the purpose of transportation of the person to the state of his or her legal residence pursuant to Section 4461. The State Department of Developmental Services shall receive the person committed to it and shall place the person in the placement ordered by the court.

(b) If the person has at any time been found mentally incompetent pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code arising out of a complaint charging a felony offense specified in Section 290 of the Penal Code, the court shall order the State Department of Developmental Services to give notice of that finding to the designated placement facility and the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility.

(c) If the Department of Developmental Services decides that a change in placement is necessary, it shall notify in writing the court of commitment, the district attorney, and the attorney of record for the person and the regional center of its decision at least 15 days in advance of the proposed change in placement. The court may hold a hearing and (1) approve or disapprove of the change, or (2) take no action in which case the change shall be deemed approved. At the request of the district attorney or of the attorney for the person, a hearing shall be held.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1969, c. 624, p. 1264, § 5; Stats.1971, c. 1593, p. 3364, § 424, operative July 1, 1973; Stats.1977, c. 1252, p. 4603, § 643, operative July 1, 1978; Stats.1978, c. 1319, p. 4318, § 7; Stats.1980, c. 676, p. 2042, § 341; Stats.1996, c. 1026 (A.B.2104), § 4; Stats.1996, c. 1076 (S.B.1391), § 8.5.)

§ 6510. Payment of expenses on dismissal of petition

In case of the dismissal of the petition, the court may, if it considers the petition to have been filed with malicious intent, order the petitioner to pay the expenses in connection therewith, and may enforce such payment by such further orders as it deems necessary.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6511. Contriving to have person adjudged mentally retarded

Any person who knowingly contrives to have any person adjudged mentally retarded under the provisions of this article, unlawfully or improperly, is guilty of a misdemeanor.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6512. Juvenile court proceedings

If, when a boy or girl is brought before a juvenile court under the juvenile court law, it appears to the court, either before or after adjudication, that the person is mentally retarded, or if, on the conviction of any person of crime by any court it appears to the court that the person is mentally retarded, the court may adjourn the proceedings or suspend the sentence, as the case may be, and direct some suitable person to take proceedings under this article against the person before the court, and the court may order that, pending the preparation, filing, and hearing of the petition, the person before the court be detained in a place of safety, or be placed under the guardianship of some suitable person, on his entering into a recognizance for the appearance of the person upon trial or under conviction when required. If, upon the hearing of the petition, or upon a subsequent hearing, the person upon trial or under conviction is not found to be mentally retarded, the court may proceed with the trial or impose sentence, as the case may be.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6513. Payment of costs of judicial proceedings

(a) The State Department of Developmental Services shall pay for the costs, as defined in this section, of judicial proceedings, including commitment, placement, or release, under this article under both of the following conditions:

(1) The judicial proceedings are in a county within which a state hospital or developmental center maintains a treatment program for mentally retarded persons who are a danger to themselves or others.

(2) The judicial proceedings relate to a mentally retarded person who is at the time residing in the state hospital or developmental center located in the county of the proceedings.

(b) The appropriate financial officer or other designated official in a county described in subdivision (a) may prepare a statement of all costs incurred by the county in the investigation, preparation for, and conduct of the proceeding, including any costs of the district attorney or county counsel and any public defender or court–appointed counsel representing the person, and including any costs incurred by the county for the guarding or keeping of the person while away from the state hospital and for transportation of the person to and from the hospital. The statement shall be certified to by a judge of the superior court and shall be sent to the State Department of Developmental Services. In lieu of sending statements after each proceeding, the statements may be held and submitted quarterly for the preceding three–month period.

(Added by Stats.1980, c. 644, p. 1810, § 1. Amended by Stats.1996, c. 1076 (S.B.1391), § 9; Stats.2001, c. 176 (S.B.210), § 55.)

Article 3 JUVENILE COURT WARDS

§ 6550. Doubt as to mental health or condition of minor; procedure under this article

If the juvenile court, after finding that the minor is a person described by Section 300, 601, or 602, is in doubt concerning the state of mental health or the mental condition of the person, the court may continue the hearing and proceed pursuant to this article.

(Added by Stats.1969, c. 722, p. 1447, § 52, eff. Aug. 8, 1969, operative July 1, 1969. Amended by Stats.1989, c. 1360, § 163.)

§ 6551. Commitment to county facility

Treatment and evaluation; report and findings; involuntary intensive treatment. If the court is in doubt as to whether the person is mentally disordered or mentally retarded, the court shall order the person to be taken to a facility designated by the county and approved by the State Department of Mental Health as a facility for 72–hour treatment and evaluation. Thereupon, Article 1 (commencing with Section 5150) of Chapter 2 of Part 1 of Division 5 applies, except that the professional person in charge of the facility shall make a written report to the court concerning the results of the evaluation of the person's mental condition. If the professional person in charge of the facility finds the person is, as a result of mental disorder, in need of intensive treatment, the person may be certified for not more than 14 days of involuntary intensive treatment if the conditions set forth in subdivision (c) of Section 5250 and subdivision (b) of Section 5260 are complied with. Thereupon, Article 4 (commencing with Section 5250) of Chapter 2 of Part 1 of Division 5 shall apply to the person. The person may be detained pursuant to Article 4.5 (commencing with Section 5260), or Article 4.7 (commencing with Section 5270.10), or Article 6 (commencing with Section 5300) of Part 1 of Division 5 if that article applies.

Finding of mental retardation; effect of report. If the professional person in charge of the facility finds that the person is mentally retarded, the juvenile court may direct the filing in any other court of a petition for the commitment of a minor as a mentally retarded person to the State Department of Developmental Services for placement in a state hospital. In such case, the juvenile court shall transmit to the court in which the petition is filed a copy of the report of the professional person in charge of the facility in which the minor was placed for observation. The court in which the petition for commitment is filed may accept the report of the professional person in lieu of the appointment, or subpoenaing, and testimony of other expert witnesses appointed by the court, if the laws applicable to such commitment proceedings provide for the appointment by court of medical or other expert witnesses or may consider the report as evidence in addition to the testimony of medical or other expert witnesses.

Return of minor to court. If the professional person in charge of the facility for 72–hour evaluation and treatment reports to the juvenile court that the minor is not affected with any mental disorder requiring intensive treatment or mental retardation, the professional person in charge of the facility shall return the minor to the juvenile court on or before the expiration of the 72–hour period and the court shall proceed with the case in accordance with the Juvenile Court Law.

Expenditure; reimbursement by state. Any expenditure for the evaluation or intensive treatment of a minor under this section shall be considered an expenditure made under Part 2 (commencing with Section 5600) of Division 5 and shall be reimbursed by the state as are other local expenditures pursuant to that part.

Suspension of jurisdiction. The jurisdiction of the juvenile court over the minor shall be suspended during such time as the minor is subject to the jurisdiction of the court in which the petition for postcertification treatment of an imminently dangerous person or the petition for commitment of a mentally retarded person is filed or under remand for 90 days for intensive treatment or commitment ordered by such court.

(Added by Stats.1969, c. 722, p. 1447, § 53, eff. Aug. 8, 1969, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3364, § 425, operative July 1, 1973; Stats.1977, c. 1252, p. 4604, § 644, operative July 1, 1978; Stats.1988, c. 1517, § 16.)

§ 6552. Voluntary application for mental health services; authority; reception at facility; return to court

A minor who has been declared to be within the jurisdiction of the juvenile court may, with the advice of counsel, make voluntary application for inpatient or outpatient mental health services in accordance with Section 5003. Notwithstanding the provisions of subdivision (b) of Section 6000, Section 6002, or Section 6004, the juvenile court may authorize the minor to make such application if it is satisfied from the evidence before it that the minor suffers from a

mental disorder which may reasonably be expected to be cured or ameliorated by a course of treatment offered by the hospital, facility or program in which the minor wishes to be placed; and that there is no other available hospital, program, or facility which might better serve the minor's medical needs and best interest. The superintendent or person in charge of any state, county, or other hospital facility or program may then receive the minor as a voluntary patient. Applications and placements under this section shall be subject to the provisions and requirements of the Short–Doyle Act (Part 2 (commencing with Section 5600), Division 5), which are generally applicable to voluntary admissions.

If the minor is accepted as a voluntary patient, the juvenile court may issue an order to the minor and to the person in charge of the hospital, facility or program in which the minor is to be placed that should the minor leave or demand to leave the care or custody thereof prior to the time he is discharged by the superintendent or person in charge, he shall be returned forthwith to the juvenile court for a further dispositional hearing pursuant to the juvenile court law.

The provisions of this section shall continue to apply to the minor until the termination or expiration of the jurisdiction of the juvenile court.

(Added by Stats.1976, c. 445, p. 1179, § 4, eff. July 10, 1976.)

Article 4 SEXUALLY VIOLENT PREDATORS

§ 6600. Definitions

As used in this article, the following terms have the following meanings:

(a)(1) "Sexually violent predator" means a person who has been convicted of a sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(2) For purposes of this subdivision any of the following shall be considered a conviction for a sexually violent offense:

(A) A prior or current conviction that resulted in a determinate prison sentence for an offense described in subdivision (b).

(B) A conviction for an offense described in subdivision (b) that was committed prior to July 1, 1977, and that resulted in an indeterminate prison sentence.

(C) A prior conviction in another jurisdiction for an offense that includes all of the elements of an offense described in subdivision (b).

(D) A conviction for an offense under a predecessor statute that includes all of the elements of an offense described in subdivision (b).

(E) A prior conviction for which the inmate received a grant of probation for an offense described in subdivision (b).

(F) A prior finding of not guilty by reason of insanity for an offense described in subdivision (b).

(G) A conviction resulting in a finding that the person was a mentally disordered sex offender.

(3) Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(4) The provisions of this section shall apply to any person against whom proceedings were initiated for commitment as a sexually violent predator on or after January 1, 1996.

(b) "Sexually violent offense" means the following acts when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as provided in subdivision (a): a felony violation of paragraph (2) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262, Section 264.1, subdivision (a) or (b) of Section 288, or subdivision (a) of Section 289 of the Penal Code, or sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code.

(c) "Diagnosed mental disorder" includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) "Danger to the health and safety of others" does not require proof of a recent overt act while the offender is in custody.

(e) "Predatory" means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) "Recent overt act" means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

(g) Notwithstanding any other provision of law and for purposes of this section, no more than one prior juvenile adjudication of a sexually violent offense may constitute a prior conviction for which the person received a determinate term if all of the following applies:

(1) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(2) The prior offense is a sexually violent offense as specified in subdivision (b). Notwithstanding Section 6600.1, only an offense described in subdivision (b) shall constitute a sexually violent offense for purposes of this subdivision.

(3) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 because of the person's commission of the offense giving rise to the juvenile court adjudication.

(4) The juvenile was committed to the Department of the Youth Authority for the sexually violent offense.

(h) A minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense shall be entitled to specific treatment as a sexual offender. The failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator within the meaning of this article.

(Added by Stats.1995, c. 763 (A.B.888), § 3. Amended by Stats.1996, c. 462 (A.B.3130), § 4, eff. Sept. 13, 1996; Stats.1999, c. 350 (S.B.786), § 3, eff. Sept. 7, 1999; Stats.1999, c. 995 (S.B.746), § 2.2; Stats.2000, c. 643 (A.B.2849), § 1.)

§ 6600.05. Mental health facility; Atascadero State Hospital; alternate facilities; permanent facility

(a) Until a permanent housing and treatment facility is available, Atascadero State Hospital shall be used whenever a person is committed to a secure facility for mental health treatment pursuant to this article and is placed in a state hospital under the direction of the State Department of Mental Health unless there are unique circumstances that would preclude the placement of a person at that facility. If a state hospital is not used, the facility to be used shall be located on a site or sites determined by the Director of Corrections and the Director of Mental Health. In no case shall a person committed to a secure facility for mental health treatment pursuant to this article be placed at Metropolitan State Hospital or Napa State Hospital.

(b) A permanent facility for the housing and treatment of persons committed pursuant to this article shall be located on a site or sites determined by the Director of Corrections and the Director of Mental Health, with approval by the Legislature through a trailer bill or other legislation. The State Department of Mental Health shall be responsible for operation of the facility, including the provision of treatment.

(Added by Stats.1996, c. 197 (A.B.3483), § 20, eff. July 22, 1996. Amended by Stats.1997, c. 294 (S.B.391), § 40, eff. August 18, 1997; Stats.1998, c. 961 (S.B.1976), § 2, eff. Sept. 29, 1998; Stats.2001, c. 171 (A.B.430), § 29.5, eff. August 10, 2001.)

§ 6600.1. Victims under the age of 14; sexually violent offense; substantial sexual conduct

(a) If the victim of an underlying offense that is specified in subdivision (b) of Section 6600 is a child under the age of 14 and the offending act or acts involved substantial sexual conduct, the offense shall constitute a "sexually violent offense" for purposes of Section 6600.

(b) "Substantial sexual conduct" means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

(Added by Stats.1996, c. 461 (S.B.2161), § 3.)

§ 6601. Persons in custody; determination as potential sexually violent predator; prerelease evaluations; petition for commitment; time limitations exclusion

(a)(1) Whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the director may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Director of Corrections or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall not toll, discharge, or otherwise affect the term of parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

(*l*) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

(Added by Stats.1995, c. 763 (A.B.888), § 3. Amended by Stats.1996, c. 4 (A.B.1496), § 1, eff. Jan. 25, 1996; Stats.1996, c. 462 (A.B.3130),

§ 5, eff. Sept. 13, 1996; Stats.1998, c. 961 (S.B.1976), § 3, eff. Sept. 29, 1998; Stats.1999, c. 136 (S.B.11), § 1, eff. July 22, 1999.)

§ 6601.3. Custodial evaluation; maximum time

Upon a showing of good cause, the Board of Prison Terms may order that a person referred to the State Department of Mental Health pursuant to subdivision (b) of Section 6601 remain in custody for no more than 45 days beyond the person's scheduled release date for full evaluation pursuant to subdivisions (c) to (i), inclusive, of Section 6601.

(Added by Stats.1998, c. 19 (S.B.536), § 1, eff. April 14, 1998. Amended by Stats.2000, c. 41 (S.B.451), § 1, eff. June 26, 2000.)

§ 6601.5. Review of petition for likelihood of sexually violent predatory criminal behavior upon release

Upon filing of the petition and a request for review under this section, a judge of the superior court shall review the petition and determine whether the petition states or contains sufficient facts that, if true, would constitute probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. If the judge determines that the petition, on its face, supports a finding of probable cause, the judge shall order that the person be detained in a secure facility until a hearing can be completed pursuant to Section 6602. The probable cause hearing provided for in Section 6602 shall commence within 10 calendar days of the date of the order issued by the judge pursuant to this section.

(Added by Stats.1998, c. 19 (S.B.536), § 2, eff. April 14, 1998. Amended by Stats.2000, c. 41 (S.B.451), § 2, eff. June 26, 2000.)

§ 6602. Probable cause hearing; right to counsel; custody requirements; continuances

(a) A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing. Upon the commencement of the probable cause hearing, the person shall remain in custody pending the completion of the probable cause hearing. If the judge determines there is not probable cause, he or she shall dismiss the petition and any person subject to parole shall report to parole. If the judge determines that there is probable cause, the judge shall order that the person remain in custody in a secure facility until a trial is completed and shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections or other secure facility.

(b) The probable cause hearing shall not be continued except upon a showing of good cause by the party requesting the continuance.

(c) The court shall notify the State Department of Mental Health of the outcome of the probable cause hearing by forwarding to the department a copy of the minute order of the court within 15 days of the decision.

(Added by Stats.1995, c. 763 (A.B.888), § 3. Amended by Stats.1996, c. 4 (A.B.1496), § 4, eff. Jan. 25, 1996; Stats.1998, c. 19 (S.B.536), § 3, eff. April 14, 1998; Stats.1998, c. 961 (S.B.1976), § 4, eff. Sept. 29, 1998; Stats.2000, c. 41 (S.B.451), § 3, eff. June 26, 2000.)

§ 6602.5. State hospital placement; probable cause determination; identification of persons who have not had a probable cause hearing

(a) No person may be placed in a state hospital pursuant to the provisions of this article until there has been a determination pursuant to Section 6601.3 or 6602 that there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior.

(b) The State Department of Mental Health shall identify each person for whom a petition pursuant to this article has been filed who is in a state hospital on or after January 1, 1998, and who has not had a probable cause hearing pursuant to Section 6602. The State Department of Mental Health shall notify the court in which the petition was filed that the person has not had a probable cause hearing. Copies of the notice shall be provided by the court to the attorneys of record in the case. Within 30 days of notice by the State Department of Mental Health, the court shall either order the person removed from the state hospital and returned to local custody or hold a probable cause hearing pursuant to Section 6602.

(c) In no event shall the number of persons referred pursuant to subdivision (b) to the superior court of any county exceed 10 in any 30–day period, except upon agreement of the presiding judge of the superior court, the district attorney, the public defender, the sheriff, and the Director of Mental Health.

(d) This section shall be implemented in Los Angeles County pursuant to a letter of agreement between the Department of Mental Health, the Los Angeles County district attorney, the Los Angeles County public defender, the Los Angeles County sheriff, and the Los Angeles County superior court. The number of persons referred to the superior court of Los Angeles County pursuant to subdivision (b) shall be governed by the letter of agreement.

(Added by Stats.1998, c. 19 (S.B.536), § 4, eff. April 14, 1998. Amended by Stats.1998, c. 961 (S.B.1976), § 5, eff. Sept. 29, 1998.)

§ 6603. Trial by jury; right to counsel; examination by expert or professional; access to records; unanimous verdict

(a) A person subject to this article shall be entitled to a trial by jury, to the assistance of counsel, to the right to retain experts or professional persons to perform an examination on his or her behalf, and to have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

(b) The attorney petitioning for commitment under this article shall have the right to demand that the trial be before a jury.

(c)(1) If the attorney petitioning for commitment under this article determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of Mental Health to perform updated evaluations. If one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, the attorney petitioning for commitment under this article may request the State Department of Mental Health to perform replacement evaluations. When a request is made for updated or replacement evaluations, the State Department of Mental Health shall perform the requested evaluations and forward them to the petitioning attorney and to the counsel for the person subject to this article. However, updated or replacement evaluations shall not be performed except as necessary to update one or more of the original evaluations or to replace the evaluation of an evaluator who is no longer available to testify for the petitioner in court proceedings. These updated or replacement evaluations shall include review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated, either voluntarily or by court order. If an updated or replacement evaluation results in a split opinion as to whether the person subject to this article meets the criteria for commitment, the State Department of Mental Health shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601.

(2) For purposes of this subdivision, "no longer available to testify for the petitioner in court proceedings" means that the evaluator is no longer authorized by the Director of Mental Health to perform evaluations regarding sexually violent predators as a result of any of the following:

(A) The evaluator has failed to adhere to the protocol of the State Department of Mental Health.

(B) The evaluator's license has been suspended or revoked.

(C) The evaluator is unavailable pursuant to Section 240 of the Evidence Code.

(d) Nothing in this section shall prevent the defense from presenting otherwise relevant and admissible evidence.

(e) If the person subject to this article or the petitioning attorney does not demand a jury trial, the trial shall be before the court without a jury.

(f) A unanimous verdict shall be required in any jury trial.

(g) The court shall notify the State Department of Mental Health of the outcome of the trial by forwarding to the department a copy of the minute order of the court within 72 hours of the decision.

(Added by Stats.1995, c. 763 (A.B.888), § 3. Amended by Stats.1998, c. 961 (S.B.1976), § 6, eff. Sept. 29, 1998; Stats.2000, c. 420 (S.B.2018), § 2, eff. Sept. 13, 2000; Stats.2001, c. 323 (A.B.1142), § 2, eff. Sept. 24, 2001.)

§ 6604. Burden of proof; commitment for treatment; term; facilities

The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for two years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health, and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for extended commitment under this article or unless the term of commitment changes pursuant to subdivision (e) of Section 6605. Time spent on conditional release shall not count toward the two–year term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the two–year term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

(Added by Stats.1995, c. 763 (A.B.888), § 3. Amended by Stats.2000, c. 420 (S.B.2018), § 3, eff. Sept. 13, 2000.)

§ 6604.1. Commitment term

(a) The two–year term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section. The initial two–year term shall not be reduced by any time spent in a secure facility prior to the order of commitment. For any subsequent extended commitments, the term of commitment shall be for two years commencing from the date of the termination of the previous commitment.

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed for purposes of extended commitments. The rights, requirements, and procedures set forth in Section 6603 shall apply to extended commitment proceedings.

(Added by Stats.1998, c. 19 (S.B.536), § 5, eff. April 14, 1998. Amended by Stats.1998, c. 961 (S.B.1976), § 7, eff. Sept. 29, 1998; Stats.2000, c. 420 (S.B.2018), § 4, eff. Sept. 13, 2000.)

§ 6605. Post–commitment examinations; petition for conditional release; annual notice; hearing to show cause; burden of proof; term of commitment; request for review by Department of Mental Health

(a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

(b) The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing.

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for a period of two years from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he or she shall be unconditionally released and unconditionally discharged.

(Added by Stats.1995, c. 763 (A.B.888), § 3.)

§ 6606. Program of treatment; standards; protocol; model; patients who chose not to participate in a specific course of offender treatment

(a) A person who is committed under this article shall be provided with programming by the State Department of Mental Health which shall afford the person with treatment for his or her diagnosed mental disorder. Persons who decline treatment shall be offered the opportunity to participate in treatment on at least a monthly basis.

(b) Amenability to treatment is not required for a finding that any

person is a person described in Section 6600, nor is it required for treatment of that person. Treatment does not mean that the treatment be successful or potentially successful, nor does it mean that the person must recognize his or her problem and willingly participate in the treatment program.

(c) The programming provided by the State Department of Mental Health in facilities shall be consistent with current institutional standards for the treatment of sex offenders, and shall be based on a structured treatment protocol developed by the State Department of Mental Health. The protocol shall describe the number and types of treatment components that are provided in the program, and shall specify how assessment data will be used to determine the course of treatment for each individual offender. The protocol shall also specify measures that will be used to assess treatment progress and changes with respect to the individual's risk of reoffense.

(d) Notwithstanding any other provision of law, except as to requirements relating to fire and life safety of persons with mental illness, and consistent with information and standards described in subdivision (c), the department is authorized to provide the programming using an outpatient/day treatment model, wherein treatment is provided by licensed professional clinicians in living units not licensed as health facility beds within a secure facility setting, on less than a 24–hour a day basis. The department shall take into consideration the unique characteristics, individual needs, and choices of persons committed under this article, including whether or not a person needs antipsychotic medication, whether or not a person has physical medical conditions, and whether or not a person chooses to participate in a specified course of offender treatment. The department shall ensure that policies and procedures are in place that address changes in patient needs, as well as patient choices, and respond to treatment needs in a timely fashion. The department, in implementing this subdivision, shall be allowed by the State Department of Health Services to place health facility beds at Coalinga State Hospital in suspense for a period of up to six years. Coalinga State Hospital may remove all or any portion of its voluntarily suspended beds into active license status by request to the State Department of Health Services. The facility's request shall be granted unless the suspended beds fail to comply with current operational requirements for licensure.

(e) The department shall meet with each patient who has chosen not to participate in a specific course of offender treatment during monthly treatment planning conferences. At these conferences the department shall explain treatment options available to the patient, offer and re–offer treatment to the patient, seek to obtain the patient's cooperation in the recommended treatment options, and document these steps in the patient's health record. The fact that a patient has chosen not to participate in treatment in the past shall not establish that the patient continues to choose not to participate.

(Added by Stats.1995, c. 763 (A.B.888), § 3. Amended by Stats.2005, c. 80 (A.B.131), § 20, eff. July 19, 2005.)

§ 6607. Determination that future predatory acts unlikely; report and recommendation of conditional release; judicial hearing

(a) If the Director of Mental Health determines that the person's diagnosed mental disorder has so changed that the person is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the director shall forward a report and recommendation for conditional release in accordance with Section 6608 to the county attorney designated in subdivision (i) of Section 6601, the attorney of record for the person, and the committing court.

(b) When a report and recommendation for conditional release is filed by the Director of Mental Health pursuant to subdivision (a), the court shall set a hearing in accordance with the procedures set forth in Section 6608.

(Added by Stats.1995, c. 763 (A.B.888), § 3.)

§ 6608. Petition for conditional release and discharge; concurrence of director; judicial hearing; subsequent petitions; forensic conditional release program; unconditional discharge; burden of proof

(a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release and subsequent unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 15 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state–operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state–operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

(e) Before placing a committed person in a state–operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state–operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 21 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

(g) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

(j) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(k) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

(Added by Stats.1995, c. 763 (A.B.888), § 3.)

§ 6608.5. Conditional release; placement in county of domicile unless extraordinary circumstances require placement outside county; considerations for recommending a specific placement for community outpatient treatment; placement restrictions with respect to schools

(a) A person who is conditionally released pursuant to this article shall be placed in the county of the domicile of the person prior to the person's incarceration, unless the court finds that extraordinary circumstances require placement outside the county of domicile.

(b)(1) For the purposes of this section, "county of domicile" means the county where the person has his or her true, fixed, and permanent home and principal residence and to which he or she has manifested the intention of returning whenever he or she is absent. For the purposes of determining the county of domicile, the court may consider information found on a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or information contained in an arrest record, probation officer's report, trial transcript, or other court document. If no information can be identified or verified, the county of domicile of the individual shall be considered to be the county in which the person was arrested for the crime for which he or she was last incarcerated in the state prison or from which he or she was last returned from parole.

(2) In a case where the person committed a crime while being held for treatment in a state hospital, or while being confined in a state prison or local jail facility, the county wherein that facility was located shall not be considered the county of domicile unless the person resided in that county prior to being housed in the hospital, prison, or jail.

(c) For the purposes of this section, "extraordinary circumstances" means circumstances that would inordinately limit the department's ability to effect conditional release of the person in the county of domicile in accordance with Section 6608 or any other provision of this article, and the procedures described in Sections 1605 to 1610, inclusive, of the Penal Code.

(d) The county of domicile shall designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons committed as sexually violent predators who are about to be conditionally released under Section 6608. Upon notification by the department of a person's potential or expected conditional release under Section 6608, the county of domicile shall notify the department of the name of the designated agency or program, at least 60 days before the date of the potential or expected release.

(e) * * * In recommending a specific placement for community outpatient treatment * * *, the department or its designee shall consider all of the following:

* * * (1) The concerns and proximity * * * of the victim or the victim's next of kin.

(2) The age and profile of the victim or victims in the sexually violent offenses committed by the person subject to placement. For purposes of this subdivision, the "profile" of a victim includes, but is not limited to, gender, physical appearance, economic background, profession, and other social or personal characteristics.

(f) Notwithstanding any other provision of law, a person released under this section shall not be placed within one–quarter mile of any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if either of the following conditions exist:

(1) The person has previously been convicted of a violation of Section 288.5 of, or subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 of, the Penal Code.

(2) The court finds that the person has a history of improper sexual conduct with children.

(Added by Stats.2004, c. 222 (A.B.493), § 1, eff. Aug. 12, 2004. Amended by Stats.2005, c. 162 (A.B.893), § 1; Stats.2005, c. 486 (S.B.723), § 1.5.)

§ 6608.7. Interagency agreements or contracts for services related to supervision or monitoring of sexually violent predators conditionally released into community

The State Department of Mental Health may enter into an interagency agreement or contract with the Department of Corrections or with local law enforcement agencies for services related to supervision or monitoring of sexually violent predators who have been conditionally released into the community under the forensic conditional release program pursuant to this article.

(Added by Stats.2005, c. 137 (S.B.383), § 1.)

§ 6609. Conditional release program; requests for information on participants; time for compliance

Within 10 days of a request made by the chief of police of a city or the sheriff of a county, the State Department of Mental Health shall provide the following information concerning each person committed as a sexually violent predator who is receiving outpatient care in a conditional release program in that city or county: name, address, date of commitment, county from which committed, date of placement in the conditional release program, fingerprints, and a glossy photograph no smaller than 31/8 x 31/8 inches in size, or clear copies of the fingerprints and photograph.

(Added by Stats.1996, c. 462 (A.B.3130), § 7, eff. Sept. 13, 1996.)

§ 6609.1. Community outpatient treatment or petition for release or unconditional discharge of sexually violent predators; notice requirements; agency comments and statements; other notice requirements concerning recommitment recommendations or review of commitment status; parole arrangement; time limits; subsequent notice

(a)(1) When the State Department of Mental Health makes a recommendation to the court for community outpatient treatment for any person committed as a sexually violent predator, or when a person who is committed as a sexually violent predator pursuant to this article

has petitioned a court pursuant to Section 6608 for conditional release under supervision and treatment in the community pursuant to a conditional release program, or has petitioned a court pursuant to Section 6608 for subsequent unconditional discharge, and the department is notified, or is aware, of the filing of the petition, and when a community placement location is recommended or proposed, the department shall notify the sheriff or chief of police, or both, the district attorney, or the county's designated counsel, that have jurisdiction over the following locations:

(A) The community in which the person may be released for community outpatient treatment.

(B) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(C) The county that filed for the person's civil commitment pursuant to this article.

(2) The department shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. The department shall also notify the Department of Justice.

(3) The notice shall be given when the department or its designee makes a recommendation under subdivision (e) of Section 6608 or proposes a placement location without making a recommendation, or when any other person proposes a placement location to the court and the department or its designee is made aware of the proposal.

(4) The notice shall be given at least 15 days prior to the department's submission of its recommendation to the court in those cases in which the department recommended community outpatient treatment under Section 6607, or in which the department or its designee is recommending or proposing a placement location, or in the case of a petition or placement proposal by someone other than the department or its designee, within 48 hours after becoming aware of the petition or placement proposal.

(5) The notice shall state that it is being made under this section and include all of the following information concerning each person committed as a sexually violent predator who is proposed or is petitioning to receive outpatient care in a conditional release program in that city or county:

(A) The name, proposed placement address, date of commitment, county from which committed, proposed date of placement in the conditional release program, fingerprints, and a glossy photograph no smaller than 3 1/8 X 3 1/8 inches in size, or clear copies of the fingerprints and photograph.

(B) The date, place, and time of the court hearing at which the location of placement is to be considered and a proof of service attesting to the notice's mailing in accordance with this subdivision.

(C) A list of agencies that are being provided this notice and the addresses to which the notices are being sent.

(b) Those agencies receiving the notice referred to in paragraphs (1) and (2) of subdivision (a) may provide written comment to the department and the court regarding the impending release, placement, location, and conditions of release. All community agency comments shall be combined and consolidated. In addition, a single agency in the community of the specific proposed or recommended placement address may suggest appropriate, alternative locations for placement within that community. The State Department of Mental Health shall issue a written statement to the commenting agencies and to the court within 10 days of receiving the written comments with a determination as to whether to adjust the release location or general terms and conditions, and explaining the basis for its decision. In lieu of responding to the individual community agencies or individuals, the department's statement responding to the community comment shall be in the form of a public statement.

(c) The agencies' comments and department's statements shall be considered by the court which shall, based on those comments and statements, approve, modify, or reject the department's recommendation or proposal regarding the community or specific address to which the person is scheduled to be released or the conditions that shall apply to the release if the court finds that the department's recommendation or proposal is not appropriate.

(d)(1) When the State Department of Mental Health makes a recommendation to pursue recommitment, makes a recommendation not to pursue recommitment, or seeks a judicial review of commitment status pursuant to subdivision (f) of Section 6605, of any person committed as a sexually violent predator, it shall provide written notice of that action to the sheriff or chief of police, or both, and to the district attorney, that have jurisdiction over the following locations:

(A) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(B) The community in which the person will probably be released, if recommending not to pursue recommitment.

(C) The county that filed for the person's civil commitment pursuant to this article.

(2) The State Department of Mental Health shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. The State Department of Mental Health shall also notify the Department of Justice. The notice shall be made at least 15 days prior to the department's submission of its recommendation to the court.

(3) Those agencies receiving the notice referred to in this subdivision shall have 15 days from receipt of the notice to provide written comment to the department regarding the impending release. Those comments shall be considered by the department, which may modify its decision regarding the community in which the person is scheduled to be released, based on those comments.

(e)(1) If the court orders the release of a sexually violent predator, the court shall notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections. The Department of Corrections shall notify the Department of Justice, the State Department of Mental Health, the sheriff or chief of police or both, and the district attorney, that have jurisdiction over the following locations:

(A) The community in which the person is to be released.

(B) The community in which the person maintained his or her last legal residence as defined in Section 3003 of the Penal Code.

(2) The Department of Corrections shall make the notifications required by this subdivision regardless of whether the person released will be serving a term of parole after release by the court.

(f) If the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 300) of Chapter 8 of Title 1 of Part 3 of the Penal Code, to allow adequate time for the Department of Corrections to make appropriate parole arrangements upon release of the person, the person shall remain in physical custody for a period not to exceed 72 hours or until parole arrangements are made by the Sexually Violent Predator Parole Coordinator of the Department of Corrections, whichever is sooner. To facilitate timely parole arrangements, notification to the Sexually Violent Predator Parole Coordinator of the Department of Corrections of the pending release shall be made by telephone or facsimile and, to the extent possible, notice of the possible release shall be made in advance of the proceeding or decision determining whether to release the person.

(g) The notice required by this section shall be made whether or not a request has been made pursuant to Section 6609.

(h) The time limits imposed by this section are not applicable when the release date of a sexually violent predator has been advanced by a judicial or administrative process or procedure that could not have reasonably been anticipated by the State Department of Mental Health and where, as the result of the time adjustments, there is less than 30 days remaining on the commitment before the inmate's release, but notice shall be given as soon as practicable.

(i) In the case of any subsequent community placement or change

of community placement of a conditionally released sexually violent predator, notice required by this section shall be given under the same terms and standards as apply to the initial placement, except in the case of an emergency where the sexually violent predator must be moved to protect the public safety or the safety of the sexually violent predator. In the case of an emergency, the notice shall be given as soon as practicable, and the affected communities may comment on the placement as described in subdivision (b).

(j) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(Added by Stats.1996, c. 462 (A.B.3130), § 8, eff. Sept. 13, 1996. Amended by Stats.1998, c. 19 (S.B.536), § 6, eff. April 14, 1998; Stats.1998, c. 961 (S.B.1976), § 9, eff. Sept. 29, 1998; Stats.1999, c. 83 (S.B.966), § 201; Stats.2002, c. 139 (A.B.1967), § 1; Stats.2004, c. 425 (A.B.2450), § 1.)

§ 6609.2. Notice of recommendation regarding disposition of sexually violent predator; immunity

(a) When any sheriff or chief of police is notified by the State Department of Mental Health of its recommendation to the court concerning the disposition of a sexually violent predator pursuant to subdivision (a) or (b) of Section 6609.1, that sheriff or chief of police may notify any person designated by the sheriff or chief of police as an appropriate recipient of the notice.

(b) A law enforcement official authorized to provide notice pursuant to this section, and the public agency or entity employing the law enforcement official, shall not be liable for providing or failing to provide notice pursuant to this section.

(Added by Stats.1996, c. 462 (A.B.3130), § 9, eff. Sept. 13, 1996. Amended by Stats.1998, c. 19 (S.B.536), § 7, eff. April 14, 1998; Stats.1998, c. 961 (S.B.1976), § 10, eff. Sept. 29, 1998.)

§ 6609.3. Notice to witnesses, victims, or next of kin

(a) At the time a notice is sent pursuant to subdivisions (a) and (b) of Section 6609.1, the sheriff, chief of police, or district attorney notified of the release shall also send a notice to persons described in Section 679.03 of the Penal Code who have requested a notice, informing those persons of the fact that the person who committed the sexually violent offense may be released together with information identifying the court that will consider the conditional release, recommendation regarding recommitment, or review of commitment status pursuant to subdivision (f) of Section 6605a. When a person is approved by the court to be conditionally released, notice of the community in which the person is scheduled to reside shall also be given only if it is (1) in the county of residence of a witness, victim, or family member of a victim who has requested notice, or (2) within 100 miles of the actual residence of a witness, victim, or family member of a victim who has requested notice. If, after providing the witness, victim, or next of kin with the notice, there is any change in the release date or the community in which the person is to reside, the sheriff, chief of police, or the district attorney shall provide the witness, victim, or next of kin with the revised information.

(b) At the time a notice is sent pursuant to subdivision (c) of Section 6609.1 the Department of Corrections shall also send a notice to persons described in Section 679.03 of the Penal Code who have requested a notice informing those persons of the fact that the person who committed the sexually violent offense has been released.

(c) In order to be entitled to receive the notice set forth in this section, the requesting party shall keep the sheriff, chief of police, and district attorney who were notified under Section 679.03 of the Penal Code, informed of his or her current mailing address.

(Added by Stats.1996, c. 462 (A.B.3130), § 10, eff. Sept. 13, 1996. Amended by Stats.1998, c. 19 (S.B.536), § 8, eff. April 14, 1998; Stats.1998, c. 961 (S.B.1976), § 11, eff. Sept. 29, 1998.)

Chapter 3 EXPENSE OF DETENTION OR PROCEEDINGS CONCERNING COMMITMENTS

Article 4 MENTALLY RETARDED PERSONS

§ 6715. Order for payment of expenses

The court shall inquire into the financial condition of the parent, guardian, or other person charged with the support of any person committed as mentally retarded person, and if it finds him able to do so, in whole or in part, it shall make a further order, requiring him to pay, to the extent the court considers him able to pay, the expenses of the proceedings in connection with the investigation, detention, and commitment of the person committed, and the expenses of his delivery to the institution, and to pay to the county, at stated periods, such sums as the court deems proper, during such time as the person remains in the institution or on leave of absence to a licensed hospital, facility or home for the care of such persons. This order may be enforced by such further orders as the court deems necessary, and may be varied, altered, or revoked in its discretion.

The court shall designate some county officer to keep a record of such payments ordered to be made, to receive, receipt for, and record such payments made, to pay over such payments to the county treasurer, to see that the persons ordered to make such payments comply with such orders, and to report to the court any failure on the part of such persons to make such payments.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6716. Authority to discharge probation officer from further accountability

In any case in which the probation officer is charged with the duty of collecting amounts payable to the county under this article, upon the verified application of the probation officer the board of supervisors may make an order discharging the probation officer from further accountability for the collection of any such amount in any case as to which the board determines that the amount is too small to justify the cost of collection; that the statute of limitations has run; or that the collection of such amount is improbable for any reason. Such order is authorization for the probation officer to close his books in regard to such item, but such discharge of accountability of the probation officer does not constitute a release of any person from liability for payment of any such amount which is due and owing to the county. The board may request a written opinion from the district attorney or county counsel as to whether any particular amount is too small to justify the cost of collection, whether the statute of limitations has run, or whether collection of any particular item is improbable.

(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6717. Cost of determining fitness of person for admission to home

The cost necessarily incurred in determining whether a person is a fit subject for admission to a home for the mentally retarded and securing his admission thereto, is a charge upon the county whence he is committed. Such costs include the fees of witnesses, medical examiners, psychiatrists and psychologists allowed by the judge ordering the examination. If the person sought to be committed is not an indigent person, the costs of the proceedings are the obligation of such person and shall be paid by him, or by the guardian or conservator of his estate as provided in Division 4 (commencing with Section 1400) of the Probate Code, or shall be paid by persons legally liable for his maintenance, unless otherwise ordered by the judge.

(Formerly § 5252, added by Stats.1965, c. 391, p. 1639, § 4, eff. May 25, 1965. Amended by Stats.1967, c. 825, p. 2250, § 2. Renumbered § 6717 and amended by Stats.1968, c. 1374, p. 2649, § 29, operative July 1, 1969; Stats.1979, c. 730, p. 2538, § 154, operative Jan. 1, 1981.)

§ 6718. Claims for amounts due from county to state

The State Department of Mental Health shall present to the county, not more frequently than monthly, a claim for the amount due the state

by reason of commitments of the mentally retarded which the county shall process and pay pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.
(Formerly § 5262.6, added by Stats.1939, c. 440, p. 1774, § 2. Amended by Stats.1965, c. 263, p. 1260, § 18. Renumbered § 5253 and amended by Stats.1967, c. 90, p. 1004, § 8. Renumbered § 6718 and amended by Stats.1968, c. 1374, p. 2649, § 31, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3365, § 426, operative July 1, 1973; Stats.1977, c. 1252, p. 4605, § 645, operative July 1, 1978.)

Chapter 4 EXECUTION OF COMMITMENT ORDERS

Article 4 MENTALLY RETARDED PERSONS

§ 6740. Delivery of order, findings, conclusions and data

The court shall attach to the order of commitment of a mentally retarded person its findings and conclusions, together with all the social and other data it has bearing upon the case, and the same shall be delivered to the home with the order.
(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6741. Persons authorized to execute order; compensation

The sheriff or probation officer, whichever may be designated by the court, may execute the order of commitment with respect to any mentally retarded person.

In any case in which the probation officer executes the order of commitment, he shall be compensated for transporting such person to a state hospital in the amount and manner in which a sheriff is compensated for similar services.
(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

Article 5 MEDICAL EXAMINERS

§ 6750. Medical examiners; certification; number; revocation of certificate

The superior court judge of each county may grant certificates in accordance with the form prescribed by the State Department of Mental Health, showing that the persons named therein are reputable physicians licensed in this state, and have been in active practice of their profession at least five years. When certified copies of such certificates have been filed with the department, it shall issue to such persons certificates or commissions, and the persons therein named shall be known as "medical examiners." There shall at all times be at least two such medical examiners in each county. The certificate may be revoked by the department for incompetency or neglect, and shall not be again granted without the consent of the department.
(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3366, § 427, operative July 1, 1973; Stats.1977, c. 1252, p. 4605, § 646, operative July 1, 1978.)

§ 6751. Medical examiners; record of certificates

The department shall keep in its office a record showing the name, residence, and certificate of each duly qualified medical examiner. Immediately upon the receipt of each duly certified copy of a medical examiner's certificate, it shall file the same, and advise him of its receipt and filing.
(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

Chapter 6 COUNSELORS IN MENTAL HEALTH

§ 6775. Creation of office; nomination and appointment

The office of counselor in mental health may be created in any county in this state by the board of supervisors thereof. The counselors in mental health to serve under the provisions of this chapter shall be nominated and appointed by the judge of the superior court by written order entered in the minutes of the court.
(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6776. Number appointed; compensation

In each county where the office of counselor in mental health has been created under the provisions of this chapter, the judge of the superior court may appoint two such counselors. In Los Angeles County, the number, compensation, and benefits of counselors in mental health are governed by the Trial Court Employment Protection and Governance Act (Chapter 7 (commencing with Section 71600) of Title 8 of the Government Code).
(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.2002, c. 784 (S.B.1316), § 620.)

§ 6777. Term of office; full–time employment

The term of office of the counselors in mental health shall be during the pleasure of the court, and they may at any time be removed by the court in its discretion. Such counselors shall devote their entire time and attention to the duties of their office.
(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

§ 6778. Services; powers of peace officer

The counselor in mental health may perform such services as are designated by the county. Every counselor, assistant counselor, and deputy counselor in mental health shall have the powers of a peace officer.
(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2685, § 110, operative July 1, 1969.)

§ 6779. References to psychopathic probation officer; probation of incompetent persons

Wherever in this code or in any other statute reference is made to psychopathic probation officers, such reference shall be deemed to mean and refer to the counselors in mental health provided for in this chapter; and wherever in this code or in any other statute reference is made to probation of incompetent persons, such reference shall mean and refer to supervision of such persons.
(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

Chapter 7 DUTIES OF PEACE OFFICERS

§ 6800. Poor and indigent committed persons; care of patients; effect of delivery to hospital

All peace officers and other persons having similar duties relating to judicially committed poor persons shall see that all poor and indigent committed persons within their respective municipalities are speedily granted the relief conferred by this part. When so ordered by a superior court judge, they shall see that such committed persons are, without unnecessary delay, transferred to the proper state hospitals provided for their care and treatment. Before sending a person to any such hospital, they shall see that he is in a state of bodily cleanliness and comfortably clothed with clean clothes. The department may by order direct that any person whom it deems unsuitable therefor shall not be employed as an attendant for any committed person. After the patient has been delivered to the proper officers of the hospital, the care and custody of the county or municipality from which he is sent ceases.
(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2686, § 111, operative July 1, 1969.)

Chapter 8 MENTALLY DISORDERED PERSONS CHARGED WITH CRIME

§ 6825. Procedures; law governing

The procedures for handling mentally disordered persons charged with the commission of public offenses are provided for in Section 1026 of the Penal Code and in Chapter 6 (commencing with Section 1365), Title 10, Part 2 of the Penal Code.
(Added by Stats.1967, c. 1667, p. 4107, § 37, operative July 1, 1969.)

WELFARE AND INSTITUTIONS CODE — MENTAL INSTITUTIONS

Division 7 MENTAL INSTITUTIONS

Chapter 1 COUNTY PSYCHIATRIC HOSPITALS

§ 7100. Facilities and hospital service; approval of department

The board of supervisors of each county may maintain in the county hospital or in any other hospital situated within or without the county or in any other psychiatric health facility situated within or without the county, suitable facilities and nonhospital or hospital service for the detention, supervision, care, and treatment of persons who are mentally disordered, developmentally disabled, or who are alleged to be such.

The county may contract with public or private hospitals for such facilities and hospital service when they are not suitably available in any institution, psychiatric facility, or establishment maintained or operated by the county.

The facilities and services for the mentally disordered and allegedly mentally disordered shall be subject to the approval of the State Department of Mental Health, and the facilities and services for the developmentally disabled and allegedly developmentally disabled shall be subject to the approval of the State Department of Developmental Services. The professional person having charge and control of any such hospital or psychiatric health facility shall allow the department whose approval is required to make such investigations thereof as it deems necessary at any time.

Nothing in this chapter means that mentally disordered or developmentally disabled persons may not be detained, supervised, cared for, or treated, subject to the right of inquiry or investigation by the department, in their own homes, or the homes of their relatives or friends, or in a licensed establishment.

(Formerly § 6000, Stats.1937, c. 369, p. 1147, § 6000. Amended by Stats.1949, c. 1211, p. 2127, § 2. Renumbered § 6300 and amended by Stats.1965, c. 391, p. 1696, § 29, eff. May 25, 1965; Stats.1967, c. 1423, p. 3350, § 1. Renumbered § 7100 and amended by Stats.1968, c. 1374, p. 2683, § 96, operative July 1, 1969; Stats.1971, c. 1593, p. 3368, § 432, operative July 1, 1973; Stats.1977, c. 1252, p. 4605, § 647, operative July 1, 1978; Stats.1978, c. 1234, p. 3988, § 8; Stats.1980, c. 676, p. 2043, § 343.)

§ 7101. County psychiatric hospital

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.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

§ 7102. Persons eligible for care and treatment; involuntary patients

The superintendent or person in charge of the county psychiatric hospital, may receive, detain, supervise, care for or treat in the hospital any person who comes within any of the following descriptions:

(a) Who has been placed therein pursuant to a court order or court commitment under the provisions of this code or the Penal Code.

(b) Who has been placed therein pursuant to the provisions of Part 1 of Division 5 of this code.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

§ 7103. Persons eligible for care and treatment; voluntary patients and conservatees

The superintendent or person in charge of the county psychiatric hospital may admit and provide care and treatment in the hospital for any person who comes within the following descriptions:

(a) Who voluntarily makes a written application as provided in Chapter 1 (commencing with Section 6000) of Part 1 of Division 6 of this code.

(b) Who is a conservatee and has written application made in his behalf by his conservator.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

§ 7104. Reliance on faith healing; exemption from medical or psychiatric treatment

Any adult person detained in such hospital, who is in such condition of mind as to render him competent to make such application shall at his request be exempt from medical or psychiatric treatment, upon filing with the superintendent a statement that he depends upon prayer or spiritual means for healing in the practice of the religion of a well–recognized religious church, sect, denomination, or organization. In case of an adult not found to be in such condition of mind, a similar statement may be filed on his behalf by another and thereupon similar exemption shall be granted. Any minor detained in such hospital shall be exempt from medical or psychiatric treatment if his parent or guardian or conservator shall file with said superintendent an affidavit stating that he relies upon prayer or spiritual means for healing in the practice of the religion of a well–recognized religious church, sect, denomination or organization.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1979, c. 730, p. 2538, § 155, operative Jan. 1, 1981.)

§ 7105. Discharge of patient

A superintendent or person in charge of the county psychiatric hospital may discharge any patient who is not a proper case for treatment therein.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

§ 7106. Charges; reimbursement of county

In case a county psychiatric hospital patient or the person legally liable for his maintenance is or becomes the owner of property, real, personal, or mixed, the county furnishing such care, treatment, or observation, shall be reimbursed therefrom for its charges. The board of supervisors of the county shall fix and determine a schedule of charges for the care, treatment, or observation of such patients, and reimbursement to the county shall be made upon the basis of the charges so fixed.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

§ 7107. Immunity from criminal liability

Any superintendent or person in charge of the county psychiatric hospital, and any public officer, public employee, or public physician who either admits, causes to be admitted, delivers, or assists in delivering, detains, cares for, or treats, or assists in detaining, caring for or treating, any person pursuant to this chapter shall not be rendered criminally liable thereby.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

Chapter 2 STATE HOSPITALS FOR THE MENTALLY DISORDERED

Article 1 ESTABLISHMENT AND GENERAL GOVERNMENT

§ 7200. State hospitals

There are in the state the following state hospitals for the care, treatment, and education of the mentally disordered:

(a) Metropolitan State Hospital near the City of Norwalk, Los Angeles County.

(b) Atascadero State Hospital near the City of Atascadero, San Luis Obispo County.

(c) Napa State Hospital near the City of Napa, Napa County.

(d) Patton State Hospital near the City of San Bernardino, San Bernardino County.

(e) Coalinga State Hospital near the City of Coalinga, Fresno County.

(Formerly § 6500, Stats.1937, c. 369, p. 1147, § 6500. Amended by Stats.1945, c. 442, p. 931, § 1; Stats.1947, c. 368, p. 929, § 1; Stats.1950, 1st Ex.Sess., c. 14, p. 449, § 1; Stats.1951, c. 525, p. 1673, § 2; Stats.1951, c. 968, p. 2589, § 2; Stats.1953, c. 900, p. 2257, § 2; Stats.1967, c. 90, p. 1004, § 12. Renumbered § 7200 and amended by Stats.1968, c. 1374, p. 2684, § 99, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3368, § 433, operative July 1, 1973; Stats.1977, c. 1252, p. 4606, § 648, operative July 1, 1978; Stats.1978, c. 429, p. 1463, § 221, eff. July 17, 1978, operative July 1, 1978; Stats.1986, c. 224, § 13, eff. June 30, 1986, operative July 1, 1986; Stats.2003, c. 356 (A.B.941), § 3.)

§ 7200.05. Metropolitan State Hospital; patient placement under Penal Code provisions; legislative intent

It is the intent of the Legislature that not more than 227 patients whose placement has been required pursuant to provisions of the Penal Code shall be placed in Metropolitan State Hospital in the 1996–97 fiscal year.

(Added by Stats.1996, c. 197 (A.B.3483), § 21, eff. July 22, 1996.)

§ 7200.06. Napa State Hospital; percentage of available licensed beds; security

(a) Of the 1,362 licensed beds at Napa State Hospital, at least 20 percent of these beds shall be available in any given fiscal year for use by counties for contracted services. Of the remaining beds, in no case shall the population of patients whose placement has been required pursuant to the Penal Code exceed 980.

(b) After construction of the perimeter security fence is completed at Napa State Hospital, no patient whose placement has been required pursuant to the Penal Code shall be placed outside the perimeter security fences, with the exception of placements in the general acute care and skilled nursing units. The State Department of Mental Health shall ensure that appropriate security measures are in place for the general acute care and skilled nursing units.

(c) Any alteration to the security perimeter structure or policies shall be made in conjunction with representatives of the City of Napa, the County of Napa, and local law enforcement agencies.

(Added by Stats.1997, c. 294 (S.B.391), § 41, eff. August 18, 1997. Amended by Stats.2003, c. 356 (A.B.941), § 4; Stats.2004, c. 183 (A.B.3082), § 375; Stats.2005, c. 22 (S.B.1108), § 221.)

§ 7200.5. Camarillo State Hospital; Norbert I. Rieger Children's Treatment Center

The children's treatment center at Camarillo State Hospital shall be known as the Norbert I. Rieger Children's Treatment Center.

(Added by Stats.1973, c. 80, p. 142, § 1.)

§ 7201. Uniform rules and regulations; laws applicable

All of the institutions under the jurisdiction of the State Department of Mental Health shall be governed by the uniform rules and regulations of the State Department of Mental Health and all of the provisions of Part 2 (commencing with Section 4100) of Division 4 of this code on the administration of state institutions for the mentally disordered shall apply to the conduct and management of the state hospitals for the mentally disordered. All of the institutions under the jurisdiction of the State Department of Developmental Services shall be governed by the uniform rules and regulations of the State Department of Developmental Services and, except as provided in Chapter 4 (commencing with Section 7500) of this division, all of the provisions of Part 2 (commencing with Section 4440) of Division 4.1 of this code on the administration of state institutions for the developmentally disabled shall apply to the conduct and management of the state hospitals for the developmentally disabled.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3369, § 434, operative July 1, 1973; Stats.1977, c. 1252, p. 4606, § 649, operative July 1, 1978.)

§ 7202. Napa State Hospital; proposed policy or structural modifications; consultation with task force

The State Department of Mental Health shall regularly consult with the Napa State Hospital Task Force, which consists of local community representatives, on proposed policy or structural modifications to Napa State Hospital that may affect the Napa community, including, but not limited to, all of the following:

(a) Changes in the patient population mix.

(b) Construction of, or significant alterations to, facility structures.

(c) Changes in the hospital security plan.

(Added by Stats.1997, c. 294 (S.B.391), § 43, eff. August 18, 1997.)

§ 7203. Rights of way for road purposes; Patton state hospital

The Director of General Services may grant to the San Bernardino Unified School District or to the County of San Bernardino under such terms, conditions, and restrictions as he deems to be for the best interests of the state, the necessary easements and rights–of–way over and across the Patton State Hospital property for all purposes of a public or private road. The right–of–way shall be across, along, and upon the following described property:

The westerly 33 feet of Lot 2 of Block 60 of Rancho San Bernardino as recorded in Book 7 of Maps, page 2, Records of San Bernardino County, State of California, saving and excepting the southerly 40 rods thereof.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

§ 7204. Patients placed pursuant to penal code; grounds privileges and passes; accompaniment off–grounds

(a) Grounds privileges or passes may be earned by patients, whose placement has been required pursuant to the Penal Code, at all state hospitals. Grounds privileges shall be restricted to areas of the state hospital that are designated as secured campus areas.

(b) Off–ground privileges or passes shall not be granted to patients, whose placement has been required pursuant to the Penal Code, at state hospitals. When a patient whose placement has been required pursuant to the Penal Code leaves a state hospital for any purpose other than discharge, the patient shall be accompanied by staff at all times.

(Added by Stats.1997, c. 294 (S.B.391), § 44, eff. August 18, 1997.)

§ 7205. Sale of certain property of Fairview state hospital to City of Costa Mesa

The Director of General Services with the consent of the State Department of Developmental Services is hereby authorized to transfer to the City of Costa Mesa and to convey to said city all of the state's rights, title and interest, and upon such terms and conditions and with such reservations and exceptions as in the opinion of the Director of General Services may be in the best interest of the state, and subject to such use or uses as may be agreed upon by the city and the State Department of Developmental Services with the approval of the Director of General Services, in all or any part of the real property consisting of approximately five acres lying at the southwest corner of the Fairview State Hospital property in Orange County, being a parcel of land lying within Lot A of the Banning Tract, in the Rancho Santiago de Santa Ana, City of Orange, State of California, as shown on a map of said tract filed in action No. 6385 in the Superior Court of the State of California in and for the City of Los Angeles, being an action for partition entitled Hancock Banning et al. vs. Mary H. Banning, more particularly described as follows:

Beginning at the most southeasterly corner of Parcel G as shown on a record of survey filed in Book 53, pages 34 through 36, of records of Surveys in the office of the County Recorder of Orange County, California; thence along the boundary of said Parcel G northwesterly along a curve concave southwesterly having a radius of 540.00 feet through a central angle of 23 degrees, 01 minutes, 33 seconds, an arc distance of 217.01 feet, thence north 34 degrees, 32 minutes, 30 seconds west, 97.50 feet to a point on a line parallel with and 280.00

feet measured at right angles northerly of the north line of Fairview Farms as shown on said record of Survey; thence departing from the boundary of said Parcel G north 89 degrees, 27 minutes, 30 seconds east along said parallel line 936.97 feet; thence south 0 degrees, 32 minutes, 30 seconds east, 280.00 feet to said north line of Fairview Farms; thence south 89 degrees, 27 minutes, 30 seconds, west, 800.00 feet to the point of beginning.

The conveyance of such property shall be subject to the following conditions:

(a) There shall be excepted and reserved in the state all deposits of minerals, including oil and gas, in the property and to the state, or persons authorized by the state, the right to prospect for, mine, and remove such deposits from the property.

(b) If the city shall cease to use the property for public purposes, all right, title, and interest of the county in and to the property shall cease and the property shall revert and rest in the state.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3369, § 436, operative July 1, 1973; Stats.1977, c. 1252, p. 4606, § 651, operative July 1, 1978.)

§ 7206. Rights of way for road purposes; Patton state hospital

Notwithstanding the provisions of Section 4444, the Director of General Services, with the consent of the Director of Developmental Services, may grant a right–of–way for road purposes to the County of San Bernardino over and along a portion of the Patton State Hospital property adjacent to Arden Way and Pacific Street upon such terms and conditions and with such reservations and exceptions as in the opinion of the Director of General Services will be for the best interests of the state.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3370, § 437, operative July 1, 1973; Stats.1977, c. 1252, p. 4607, § 652, operative July 1, 1978; Stats.1978, c. 429, p. 1463, § 222, eff. July 17, 1978, operative July 1, 1978.)

§ 7207. Rights of way; Langley Porter Neuropsychiatric Institute

The Director of General Services, with the consent of the State Department of Mental Health, may grant to the Regents of the University of California, upon such terms, conditions, and with such reservations and exceptions as in the opinion of the Director of General Services may be for the best interest of the state, the necessary easements and rights–of–way for a utilities relocation and campus access road on the Langley Porter Neuropsychiatric Institute property. The right–of–way shall be across, along and upon the following described property:

A strip of land approximately 40′ in width extending from the southerly line of Parnassus Avenue beginning at a point on the southerly boundary of Parnassus Avenue 331′ from the westerly boundary of said parcel of land described by deed dated October 1, 1940, and extending in a southerly direction to the south boundary of Langley Porter property.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1977, c. 1252, p. 4608, § 653, operative July 1, 1978.)

Article 2 ADMISSION

§ 7225. Patients

Except as otherwise provided, all patients admitted to a state hospital shall be duly committed or transferred thereto, and shall be subject to the general rules and regulations of the department and of the hospital.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

§ 7226. Soldiers or sailors

The State Department of Mental Health may admit to any state hospital for the mentally disordered, if there is room therein, any mentally disordered soldier or sailor in the service of the United States on such terms as are agreed upon between the department and the properly authorized agents, officers, or representatives of the United States government.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3370, § 438, operative July 1, 1973; Stats.1977, c. 1252, p. 4608, § 654, operative July 1, 1978.)

§ 7227. Mentally disordered prisoners

Mentally disordered prisoners in the state prisons shall be admitted to the state hospitals in accordance with the provisions of the Penal Code.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

§ 7228. Treatment of patients in secure setting; evaluation; place

Prior to admission to the Napa State Hospital or the Metropolitan State Hospital, the State Department of Mental Health shall evaluate each patient committed pursuant to Section 1026 or 1370 of the Penal Code. A patient determined to be a high security risk shall be treated in the department's most secure facilities. A Penal Code patient not needing this level of security shall be treated as near to the patient's community as possible if an appropriate treatment program is available.

(Added by Stats.1975, c. 1258, p. 3303, § 11. Amended by Stats.1977, c. 1252, p. 4608, § 655; Stats.1997, c. 294 (S.B.391), § 45, eff. August 18, 1997.)

§ 7230. High security risk patients; treatment facilities

Those patients determined to be high security risk patients, as described in Section 7228, shall be treated at Atascadero State Hospital or Patton State Hospital, a correctional facility, or other secure facility as defined by the State Department of Mental Health, but shall not be treated at Metropolitan State Hospital or Napa State Hospital. Metropolitan State Hospital and Napa State Hospital shall treat only low– to moderate–risk patients, as defined by the State Department of Mental Health.

(Added by Stats.1997, c. 294 (S.B.391), § 47, eff. August 18, 1997.)

§ 7231. Patient escapes or walkaways; notification of law enforcement agencies; policies and procedures

The State Department of Mental Health shall develop policies and procedures, by no later than 30 days following the effective date of the Budget Act of 1997, at each state hospital, to notify appropriate law enforcement agencies in the event of a patient escape or walkaway. Local law enforcement agencies, including local police and county sheriff departments, shall review the policies and procedures prior to final implementation by the department.

(Added by Stats.1997, c. 294 (S.B.391), § 48, eff. August 18, 1997.)

§ 7232. Patients placed pursuant to penal code; identifiable clothing; administrative directive

The State Department of Mental Health shall issue a state hospital administrative directive by no later than 30 days following the effective date of the Budget Act of 1997 to require patients whose placement has been required pursuant to the Penal Code, and other patients within the secured perimeter at each state hospital, to wear clothing that enables these patients to be readily identified.

(Added by Stats.1997, c. 294 (S.B.391), § 49, eff. August 18, 1997.)

Article 3 PATIENTS' CARE

§ 7250. Habeas corpus

Any person who has been committed is entitled to a writ of habeas corpus, upon a proper application made by the State Department of Mental Health or the State Department of Developmental Services, by that person, or by a relative or friend in his or her behalf to the judge of the superior court of the county in which the hospital is located, or if the person has been found incompetent to stand trial and has been committed pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code, judicial review shall be in the superior court for the county that determined the question of the

mental competence of the person. All documents requested by the court in the county of confinement shall be forwarded from the county of commitment to the court. Upon the return of the writ, the truth of the allegations under which he or she was committed shall be inquired into and determined. The medical history of the person as it appears in the clinical records shall be given in evidence, and the superintendent in charge of the state hospital wherein the person is held in custody and any other person who has knowledge of the facts shall be sworn and shall testify relative to the mental condition of the person.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3373, § 439, operative July 1, 1973; Stats.1974, c. 1423, p. 3126, § 3; Stats.1977, c. 1252, p. 4608, § 656, operative July 1, 1978; Stats.1992, c. 722 (S.B.485), § 31, eff. Sept. 15, 1992.)

§ 7251. Examinations of patient; reports on death or discharge

Every superintendent, or person in charge of a state hospital, shall, within three days after the reception of a patient, make or cause to be made a thorough physical and mental examination of the patient, and state the result thereof, on blanks prepared and exclusively set apart for that purpose. During the time the patient remains under his care he shall also make, or cause to be made, from time to time, examination of the mental state, bodily condition, and medical treatment of the patient at such intervals and in such manner, and state its result, upon such blank forms, as are approved by the department. In the event of the death or discharge of a patient the superintendent, or person in charge of the state hospital, shall state the circumstances thereof upon such forms as are required by the department.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

§ 7252. Donations of blood

Any patient in a state hospital, upon the consent of the superintendent and medical director of such hospital, may voluntarily donate blood to any nonprofit blood bank duly licensed by the State Department of Health Services.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3371, § 440, operative July 1, 1973; Stats.1977, c. 1252, p. 4609, § 657, operative July 1, 1978.)

§ 7253. Articles of handiwork

Every patient in a state hospital under this chapter may be permitted to keep for his own use articles of handiwork and other finished products suitable primarily for personal use, as determined by the superintendent, which have been fabricated by the patient.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

§ 7254. Criminal defendants, convicts and mentally disordered sex offenders; identifiable clothing

Notwithstanding any other provision of law, the State Department of Mental Health shall have the authority to require that patients committed to a state mental health facility pursuant to Section 1026 of, and Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code, and Sections 6316 and 6321 of this code shall wear identifiable clothing in a secured area of the facility.

(Added by Stats.1982, c. 589, § 1, eff. Aug. 25. 1982.)

Article 4 PROPERTY AND SUPPORT OF PATIENTS

§ 7275. Liability for care

The husband, wife, father, mother, or children of a patient in a state hospital for the mentally disordered, the estates of such persons, and the guardian or conservator and administrator of the estate of such patient shall cause him to be properly and suitably cared for and maintained, and shall pay the costs and charges of his transportation to a state institution. The husband, wife, father, mother, or children of a patient in a state hospital for the mentally disordered and the administrators of their estates, and the estate of such person shall be liable for his care, support, and maintenance in a state institution of which he is a patient. The liability of such persons and estates shall be a joint and several liability, and such liability shall exist whether the person has become a patient of a state institution pursuant to the provisions of this code or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the Penal Code.

This section does not impose liability for the care of mentally retarded persons in state hospitals.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2688, § 120, operative July 1, 1969; Stats.1979, c. 730, p. 2540, § 157, operative Jan. 1, 1981.)

§ 7275.1. Delegation to counties of responsibility for payment of care; policies and procedures

(a) Notwithstanding any other provision of law, the Director of Mental Health may delegate to each county all or part of the responsibility for determining the ability to pay, as delineated in subdivisions (b) and (c) of Section 5710, for the cost of care provided to mentally disordered minor children in a state hospital, and all or part of the responsibility for collecting the charges.

(b) If the director delegates responsibility pursuant to subdivision (a) and that responsibility is accepted by a county, the director shall establish and maintain the policies and procedures for making the determinations and collections. Each county to which responsibility is delegated pursuant to subdivision (a) shall comply with policies and procedures adopted pursuant to this subdivision.

(Added by Stats.1995, c. 712 (S.B.227), § 9.)

§ 7276. Charge for care and treatment; determination; reduction or cancellation of amounts due; death, leaves of absence, or discharge of patient; delegated responsibilities

(a) The charge for the care and treatment of all mentally disordered persons and alcoholics at state hospitals for the mentally disordered for whom there is liability to pay therefor shall be determined pursuant to Section 4025. The Director of Mental Health may reduce, cancel or remit the amount to be paid by the estate or the relatives, as the case may be, liable for the care and treatment of any mentally disordered person or alcoholic who is a patient at a state hospital for the mentally disordered, on satisfactory proof that the estate or relatives, as the case may be, are unable to pay the cost of that care and treatment or that the amount is uncollectible. In any case where there has been a payment under this section, and the payment or any part thereof is refunded because of the death, leave of absence, or discharge of any patient of the hospital, that amount shall be paid by the hospital or the State Department of Mental Health to the person who made the payment upon demand, and in the statement to the Controller the amounts refunded shall be itemized and the aggregate deducted from the amount to be paid into the State Treasury, as provided by law. If any person dies at any time while his or her estate is liable for his or her care and treatment at a state hospital, the claim for the amount due may be presented to the executor or administrator of his or her estate, and paid as a preferred claim, with the same rank in order of preference, as claims for expenses of last illness.

(b) If the Director of Mental Health delegates to the county the responsibility for determining the ability of a minor child and his or her parents to pay for state hospital services, the requirements of Sections 5710 and 7275.1 and the policies and procedures established and maintained by the director, including those relating to the collection and accounting of revenue, shall be followed by each county to which that responsibility is delegated.

(Formerly § 6651, Stats.1937, c. 369, p. 1155, § 6651. Amended by Stats.1939, c. 442, p. 1775, § 1; Stats.1941, c. 913, p. 1775, § 1; Stats.1943, c. 1052, p. 2991, § 1.5; Stats.1953, c. 549, p. 1809, § 1; Stats.1954, c. 3, p. 109, § 1; Stats.1959, c. 186, p. 2081, § 1; Stats.1961, c. 176, p. 1181, § 1; Stats.1967, c. 1620, p. 3863, § 7, eff. Aug. 30, 1967. Renumbered § 7276 and amended by Stats.1968, c. 1374, p. 2684, § 101, operative July 1, 1969. Amended by Stats.1971,

c. 1593, p. 3372, § 442, operative July 1, 1973; Stats.1977, c. 1252, p. 4610, § 659, operative July 1, 1978. Amended by Stats.1995, c. 712 (S.B.227), § 10.)

§ 7277. Collection of costs and charges

The State Department of Mental Health shall collect all the costs and charges mentioned in Section 7275, and shall determine, pursuant to Section 7275, and collect the charges for care and treatment rendered persons in any community mental hygiene clinics maintained by the department and may take such action as is necessary to effect their collection within or without the state. The Director of Mental Health may, however, at his discretion, refuse to accept payment of charges for the care and treatment in a state hospital of any mentally disordered person or inebriate who is eligible for deportation by the federal immigration authorities.

(Formerly § 6652, Stats.1937, c. 369, p. 1156, § 6652. Amended by Stats.1949, c. 758, p. 1489, § 1; Stats.1953, c. 292, p. 1445, § 1; Stats.1967, c. 1620, p. 3863, § 8, eff. Aug. 30, 1967. Renumbered § 7277 and amended by Stats.1968, c. 1374, p. 2685, § 102, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3373, § 443, operative July 1, 1973; Stats.1977, c. 1252, p. 4611, § 660, operative July 1, 1978.)

§ 7277.1. Claim for costs and charges

In the case of liability for care arising under Section 7275 during the lifetime of a decedent, where the decedent, or his spouse, father, mother, or child, has been a patient in a state hospital preceding the date of decedent's death, a claim for costs and charges shall be mailed within four months after written request therefor, in the form required by the department, by the fiduciary of the estate or trust or by any other person liable for the claim or any portion thereof.

(Added by Stats.1968, c. 1299, p. 2450, § 9.)

§ 7278. Investigation to determine existence of property, guardian and relatives

The department shall, following the admission of a patient into a state hospital for the mentally disordered cause an investigation to be made to determine the moneys, property, or interest in property, if any, the patient has, and whether he has a duly appointed and acting guardian to protect his property and his property interests. The department shall also make an investigation to determine whether the patient has any relative or relatives responsible under the provisions of this code for the payment of the costs of transportation and maintenance, and shall ascertain the financial condition of such relative or relatives to determine whether in each case such relative or relatives are in fact financially able to pay such charges. All reports in connection with such investigation, together with the findings of the department, shall be records of the department, and may be inspected by interested relatives, their agents, or representatives at any time upon application.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

§ 7279. Payment for care

(a) Duty of guardian or conservator. If any person committed to a state mental hospital has sufficient estate for the purpose, the guardian or conservator of the person's estate shall pay for his or her care, support, maintenance, and necessary expenses at the mental hospital to the extent of the estate. The payment may be enforced by the order of the judge of the superior court where the guardianship or conservatorship proceedings are pending. On the filing of a petition therein by the department showing that the guardian or conservator has failed, refused, or neglected to pay for such care, support, maintenance, and expenses, the court, by order, shall direct the payment by the guardian or conservator. Such order may be enforced in the same manner as are other orders of the court.

(b) Sale of property. If at any time there is not sufficient money on hand in the estate of a committed person to pay the claim of a state mental hospital for his or her care, support, maintenance, and expenses therein, the court may, on petition of the guardian or conservator of the estate, or if the guardian or conservator fails, refuses, or neglects to apply, on the petition of the department, make an order directing the guardian or conservator to sell so much of the other personal or real property or both, of the person as is necessary to pay for the care, support, maintenance, and expenses of the person at the mental hospital. From the proceeds of such sale, the guardian or conservator shall pay the amount due for the care, support, maintenance, and expenses at the mental hospital, and also such other charges as are allowed by law.

(c) Restriction on reduction of estate. Payment for the care, support, maintenance, and expenses shall not be extracted, however, from a person who has no more than five hundred dollars ($500) of assets.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1979, c. 730, p. 2540, § 158, operative Jan. 1, 1981; Stats.1984, c. 797, § 3.)

§ 7280. Payments for future personal needs

The guardian or conservator of the estate of any person who is confined in a state mental hospital may, from time to time, pay to the state mental hospital moneys out of the estate to be used for the future personal needs of the mentally disordered person while in a state mental hospital and for burial expenses, such sums so paid to be credited to the patient's personal deposit account, subject to the provision relating to the deposit of funds in the patients' personal deposit fund.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1979, c. 730, p. 2541, § 159, operative Jan. 1, 1981.)

§ 7281. Patients' personal deposit fund

There is at each institution under the jurisdiction of the State Department of Mental Health and at each institution under the jurisdiction of the State Department of Developmental Services, a fund known as the patients' personal deposit fund. Any funds coming into the possession of the superintendent, belonging to any patient in that institution, shall be deposited in the name of that patient in the patients' personal deposit fund, except that if a guardian or conservator of the estate is appointed for the patient then he shall have the right to demand and receive such funds. Whenever the sum belonging to any one patient, deposited in the patients' personal deposit fund, exceeds the sum of five hundred dollars ($500), the excess may be applied to the payment of the care, support, maintenance and medical attention of the patient. After the death of the patient any sum remaining in his personal deposit account in excess of burial costs may be applied for payment of care, support, maintenance and medical attention. Any of the funds belonging to a patient deposited in the patients' personal deposit fund may be used for the purchase of personal incidentals for the patient or may be applied in an amount not exceeding five hundred dollars ($500) to the payment of his burial expenses.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3373, § 444, operative July 1, 1973; Stats.1977, c. 1252, p. 4611, § 661, operative July 1, 1978; Stats.1979, c. 730, p. 2542, § 160, operative Jan. 1, 1981.)

§ 7282. Action to enforce payment

The State Department of Mental Health with respect to a state hospital under its jurisdiction, or the State Department of Developmental Services with respect to a state hospital under its jurisdiction, may in its own name bring an action to enforce payment for the cost and charges of transportation of a person to a state hospital against any person, guardian, conservator, or relative liable for such transportation. The department also may in its own name bring an action to recover for the use and benefit of any state hospital or for the state the amount due for the care, support, maintenance, and expenses of any patient therein, against any county, or officer thereof, or against

any person, guardian, conservator, or relative, liable for such care, support, maintenance, or expenses.
(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3374, § 445, operative July 1, 1973; Stats.1977, c. 1252, p. 4611, § 662, operative July 1, 1978; Stats.1979, c. 730, p. 2542, § 161, operative Jan. 1, 1981.)

§ 7282.1. Actions by individuals; notice to director; lien

If a person who is or has been a recipient of services provided by the State Department of Developmental Services or the State Department of Mental Health in a state hospital, or the guardian, conservator, or personal representative of such person, brings an action or claim against a third party for an injury, disorder, or disability, which resulted in the need for care, maintenance, or treatment in a state hospital, the person or the guardian, conservator, or personal representative shall within 30 days of filing the action or claim give to the Director of Developmental Services, for hospitals under the jurisdiction of the State Department of Developmental Services, or the Director of Mental Health, for hospitals under the jurisdiction of the State Department of Mental Health, written notice of the action or claim and of the name of the court or agency in which the action or claim is to be brought. Proof of the notice shall be filed in the action or claim. For pending actions or claims filed prior to January 1, 1986, proof of the notice shall be filed by February 1, 1986.

Any judgment, award, or settlement arising out of the action or claim shall be subject to a lien in favor of the Director of Developmental Services or the Director of Mental Health, for hospitals under the jurisdiction of that department, for the cost of state hospital care and treatment furnished with respect to the subject of the action or claim, however:

(a) A lien shall not attach to that portion of a money judgment awarded for pain and suffering.

(b) A lien shall not attach if over 180 days has elapsed between the time when notice was given to the department and the time when the department has filed its lien with the court or agency in which the action or claim has been brought.

(c) A lien authorized by this section shall not be placed for services which have been paid through the state Medi–Cal program.

(d) This section shall not apply to actions or claims in which a final judgment, award, or settlement has been entered into prior to January 1, 1986.
(Added by Stats.1985, c. 1545, § 1.)

§ 7283. Disposition of money collected for transportation costs; use of estimates or formula

All moneys collected by the State Department of Mental Health and the State Department of Developmental Services for the cost and charges of transportation of persons to state hospitals shall be remitted by the department to the State Treasury for credit to, and shall become a part of, the current appropriation from the General Fund of the state for the transportation of the mentally disordered, correctional school, or other state hospital patients and shall be available for expenditure for such purposes. In lieu of exact calculations of moneys collected for transportation charges the department may determine the amount of such collections by the use of such estimates or formula as may be approved by the Department of Finance.
(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3374, § 446, operative July 1, 1973; Stats.1977, c. 1252, p. 4612, § 663, operative July 1, 1978.)

§ 7284. Powers of department

Guardianship or conservatorship. If any incompetent person, who has no guardian or conservator of the estate and who has been admitted or committed to the State Department of Mental Health for placement in any state hospital for the mentally disordered, is the owner of any property, the State Department of Mental Health, acting through its designated officer, may apply to the superior court of the proper county for its appointment as guardian or conservator of the estate of such incompetent person.

Corporate and fiduciary powers. For the purposes of this section, the State Department of Mental Health is hereby made a corporation and may act as executor, administrator, guardian or conservator of estates, assignee, receiver, depositary or trustee, under appointment of any court or by authority of any law of this state, and may transact business in such capacity in like manner as an individual, and for this purpose may sue and be sued in any of the courts of this state.

Administration of estates. If a person admitted or committed to the State Department of Mental Health dies, leaving any estate, and having no relatives at the time residing within this state, the State Department of Mental Health may apply for letters of administration of his or her estate, and, in the discretion of the court, letters of administration may be issued to the department. When the State Department of Mental Health is appointed as guardian, conservator, or administrator, the department shall be appointed as guardian or conservator or administrator without bond. The officer designated by the department shall be required to give a surety bond in such amount as may be deemed necessary from time to time by the director, but in no event shall the initial bond be less than ten thousand dollars ($10,000), which bond shall be for the joint benefit of the several estates and the State of California. The State Department of Mental Health shall receive such reasonable fees for its services as such guardian, conservator, or administrator as the court allows. The fees paid to the State Department of Mental Health for its services as guardian, conservator, or administrator of the various estates may be used as a trust account from which may be drawn expenses for filing fees, bond premiums, court costs, and other expenses required in the administration of the various estates. Whenever the balance remaining in such trust fund account shall exceed a sum deemed necessary by the department for the payment of such expenses, such excess shall be paid quarterly by the department into the State Treasury to the credit of the General Fund.
(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2688, § 123, operative July 1, 1969; Stats.1971, c. 1593, p. 3374, § 447, operative July 1, 1973; Stats.1977, c. 1252, p. 4612, § 664, operative July 1, 1978; Stats.1979, c. 730, p. 2542, § 162, operative Jan. 1, 1981; Stats.1979, c. 1142, p. 4168, § 5; Stats.1980, c. 246, p. 496, § 9.)

§ 7285. Investment of funds

The State Department of Mental Health may invest funds held as executor, administrator, guardian or conservator of estates, or trustee, in bonds or obligations issued or guaranteed by the United States or the State of California. Such investments may be made and such bonds or obligations may be sold or exchanged for similar bonds or obligations without notice or court authorization.
(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3375, § 448, operative July 1, 1973; Stats.1977, c. 1252, p. 4613, § 665, operative July 1, 1978; Stats.1979, c. 730, p. 2543, § 163, operative Jan. 1, 1981.)

§ 7286. Common trusts

The State Department of Mental Health may establish one or more common trusts for investment of funds held as executor, administrator, guardian or conservator of estates, or trustee and may designate from time to time the amount of participation of each estate in such trusts. The funds in such trusts may be invested only in bonds or obligations issued or guaranteed by the United States or the State of California.

The income and profits of each trust shall be the property of the estates participating and shall be distributed, when received, in proportion to the amount of participation of each estate in such trust. The losses of each trust shall be the losses of the estates participating and shall be apportioned, as the same occur, upon the same basis as income and profits.
(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3375, § 449, operative July 1, 1973; Stats.1977, c. 1252, p. 4613, § 666, operative July 1, 1978; Stats.1979, c. 730, p. 2543, § 164, operative Jan. 1, 1981.)

§ 7287. Death of patient; disposition of remains; payment from guardianship or conservatorship; final account

Upon the death of an incompetent person over whom the State Department of Mental Health has obtained jurisdiction pursuant to Section 7284, the department may make proper disposition of the remains, and pay for the disposition of the remains together with any indebtedness existing at the time of the death of such person from the assets of the guardianship or conservatorship estate, and thereupon it shall file its final account with the court or otherwise close its administration of the estate of such person.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3375, § 450, operative July 1, 1973; Stats.1977, c. 1252, p. 4613, § 667, operative July 1, 1978; Stats.1979, c. 730, p. 2544, § 165, operative Jan. 1, 1981.)

§ 7288. Disposition of patient's personal property

Whenever it appears that a person who has been admitted to a state institution and remains under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services does not have a guardian or conservator of the estate and owns personal property which requires safekeeping for the benefit of the patient, the State Department of Mental Health or the State Department of Developmental Services may remove or cause to be removed such personal property from wherever located to a place of safekeeping.

Whenever it appears that such patient does not own property of a value which would warrant guardianship or conservatorship proceedings, the expenses of such removal and safekeeping shall be paid from funds appropriated for the support of the institution in which the patient is receiving care and treatment; provided, however, that if the sum on deposit to the credit of such patient in the patients' personal deposit fund exceeds the sum of three hundred dollars ($300), the excess may be applied to the payment of such expenses of removal and safekeeping.

When it is determined by the superintendent, at any time after the removal for safekeeping of such personal property, that the patient is incurable or is likely to remain in a state institution indefinitely, then any of those articles of personal property which cannot be used by the patient at the institution may be sold at public auction and the proceeds therefrom shall first be applied in reimbursement of the expenses so incurred, and the balance shall be deposited to the patient's credit in the patients' personal deposit fund. All moneys so received as reimbursement shall be deposited in the State Treasury in augmentation of the appropriation from which the expenses were paid.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3376, § 451, operative July 1, 1973; Stats.1977, c. 1252, p. 4613, § 668, operative July 1, 1978; Stats.1979, c. 730, p. 2544, § 166, operative Jan. 1, 1981; Stats.1979, c. 1142, p. 4168, § 6; Stats.1980, c. 246, p. 497, § 10.)

§ 7289. Collection of funds due client

When a person who is a client of a state hospital or developmental center in the State Department of Mental Health or the State Department of Developmental Services has no guardian or conservator of the estate and has money due or owing to him or her, the executive director of the institution of which the person is a client may, during the client's residence at the institution, collect an amount not to exceed three thousand dollars ($3,000) of any money so due or owing upon furnishing to the person, representative, officer, body or corporation in possession of or owing any sums, an affidavit executed by the executive director or acting executive director. The affidavit shall contain the name of the institution of which the person is a client, and the statement that the total amount requested pursuant to the affidavit does not exceed the sum of three thousand dollars ($3,000). Payments from retirement systems and annuity plans which are due or owing to the clients may also be collected by the executive director of the institution of which the person is a client, upon the furnishing of an affidavit executed by the executive director or acting executive director, containing the name of the institution of which the person is a client and the statement that the person is entitled to receive the payments. These sums shall be delivered to the executive director and shall be deposited by him or her in the clients' personal deposit fund as provided in Section 7281.

The receipt of the executive director shall constitute sufficient acquittance for any payment of money made pursuant to this section and shall fully discharge the person, representative, officer, body or corporation from any further liability with reference to the amount of money so paid.

The executive director of each institution shall render reports and accounts annually or more often as may be required by the department having jurisdiction over the hospital or the Department of Finance of all moneys of clients deposited in the clients' personal deposit accounts of the institution.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3376, § 452, operative July 1, 1973; Stats.1977, c. 1252, p. 4614, § 669, operative July 1, 1978; Stats.1979, c. 730, p. 2544, § 167, operative Jan. 1, 1981; Stats.1989, c. 748, § 3.)

§ 7289.1. Amount owed to client; cost–of–living adjustments

(a) The amount of three thousand dollars ($3,000) as set forth in Section 7289, shall be adjusted annually, on January 1 by the State Department of Developmental Services as it applies to state hospitals or developmental centers under its jurisdiction, and by the State Department of Mental Health as it applies to state hospitals under its jurisdiction, to reflect any increases or decreases in the cost of living occurring after December 31, 1967, so that the first adjustment becomes effective January 1, 1990. The indices of the California Consumer Price Index All Urban as prepared by the Department of Industrial Relations, shall be used as the basis for determining the changes in the cost of living.

(b) In implementing the cost–of–living provisions of this section, the State Department of Developmental Services and the State Department of Mental Health shall use the most recent December for computation of the percentage change in the cost of living after December 31, 1967. The amount of this adjustment shall be made by comparing the average index for the most recent December with the average index for December 1967. The product of any percentage increase or decrease in the average index and the amount set forth in Section 7289 shall be the adjusted amount subject to affidavit pursuant to the provisions of Section 7289.

(Added by Stats.1989, c. 748, § 4.)

§ 7290. Cost of care

The State Department of Mental Health or the State Department of Developmental Services may enter into a special agreement, secured by a properly executed bond, with the relatives, guardian, conservator, or friend of any patient therein, for his care, support, maintenance, or other expenses at the institution. Such agreement and bond shall be to the people of the State of California and action to enforce the same may be brought thereon by the department. All charges due under the provisions of this section, including the monthly rate for the patient's care and treatment as established by or pursuant to law, shall be collected monthly. No patient, however, shall be permitted to occupy more than one room in any state institution.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3377, § 453, operative July 1, 1973; Stats.1977, c. 1252, p. 4615, § 670, operative July 1, 1978; Stats.1979, c. 730, p. 2545, § 168, operative Jan. 1, 1981.)

§ 7291. County payments for care of defective or psychopathic delinquents

The county from which each person has been committed to an institution for defective or psychopathic delinquents shall pay the state the cost of the care of such person, for the time the person

committed remains a patient of the institution, at the monthly rate therefor fixed as provided in Section 7292.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

§ 7292. Cost of care

The cost of such care shall be determined and fixed from time to time by the Director of Mental Health, but in no case shall it exceed the rate of forty dollars ($40) per month.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3377, § 454, operative July 1, 1973; Stats.1977, c. 1252, p. 4615, § 671, operative July 1, 1978; Stats.1978, c. 429, p. 1464, § 223, eff. July 17, 1978, operative July 1, 1978.)

§ 7293. Claims against county

The State Department of Mental Health shall present to the county, not more frequently than monthly, a claim for the amount due the state under Section 7291 which the county shall process and pay pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3377, § 455, operative July 1, 1973; Stats.1977, c. 1252, p. 4615, § 672, operative July 1, 1978; Stats.1978, c. 429, p. 1463, § 224, eff. July 17, 1978, operative July 1, 1978.)

§ 7294. Parole, leave of absence and discharge

Authority of medical superintendent; certification of opinion. Any person who has been committed as a defective or psychopathic delinquent may be paroled or granted a leave of absence by the medical superintendent of the institution wherein the person is confined whenever the medical superintendent is of the opinion that the person has improved to such an extent that he is no longer a menace to the health and safety of others or that the person will receive benefit from such parole or leave of absence, and after the medical superintendent and the Director of Mental Health have certified such opinion to the committing court.

Return order; parole; recall. If within 30 days after the receipt of such certification the committing court orders the return of such person, the person shall be returned forthwith to await further action of the court. If within 30 days after the receipt of such certification the committing court does not order the return of the person to await the further action of the court, the medical superintendent may thereafter parole the person under such terms and conditions as may be specified by the superintendent. Any such paroled inmate may at any time during the parole period be recalled to the institution. The period of parole shall in no case be less than five years, and shall be on the same general rules and conditions as parole of the mentally disordered.

Discharge. When any person has been paroled for five consecutive years, if in the opinion of the medical superintendent and the Director of Mental Health the person is no longer a menace to the health, person, or property of himself or of any other person, the medical superintendent, subject to the approval of the Director of Mental Health, may discharge the person. The committing court shall be furnished with a certified copy of such discharge and shall thereupon make such disposition of the court case as it deems necessary and proper.

Return to court; hearing; further order. When, in the opinion of the medical superintendent, a person heretofore committed as a defective or psychopathic delinquent will not benefit by further care and treatment under any facilities of the department and should be returned to the jurisdiction of the court, the superintendent of the institution and the Director of Mental Health shall certify such opinion to the committing court including therein a report, diagnosis and recommendation concerning the person's future care, supervision or treatment. Upon receipt of such certification, the committing court shall forthwith order the return of the person to the court. The person shall be entitled to a court hearing and to present witnesses in his own behalf, to be represented by counsel and to cross–examine any witness who testifies against him. After considering all the evidence before it, the court may make such further order or commitment with reference to such person as may be authorized by law.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3377, § 456, operative July 1, 1973; Stats.1977, c. 1252, p. 4615, § 673, operative July 1, 1978.)

Article 5 TRANSFER OF PATIENTS

§ 7300. Policy; transfer to different institution; inmate of correctional school; expense

It shall be the policy of the department to make available to all persons admitted to a state hospital prior to July 1, 1969, and to all persons judicially committed or remanded to its jurisdiction all of the facilities under the control of the department. Whenever, in the opinion of the Director of Mental Health, it appears that a person admitted prior to July 1, 1969, or that a person judicially committed or remanded to the State Department of Mental Health for placement in an institution would be benefited by a transfer from that institution to another institution in the department, the director may cause the transfer of the patient from that institution to another institution under the jurisdiction of the department. Preference shall be given in any such transfer to an institution in an adjoining rather than a remote district.

However, before any inmate of a correctional school may be transferred to a state hospital for the mentally disordered he shall first be returned to a court of competent jurisdiction, and, if subject to commitment, after hearing, may be committed to a state hospital for the mentally disordered in accordance with law.

The expense of such transfers is chargeable to the state, and the bills for the same, when approved by the Director of Mental Health, shall be paid by the Treasurer on the warrant of the Controller, out of any moneys provided for the care or support of the patients or out of the moneys provided for the support of the department, in the discretion of the department.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2689, § 124, operative July 1, 1969; Stats.1969, c. 722, p. 1448, § 55, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1971, c. 1593, p. 3378, § 457, operative July 1, 1973; Stats.1977, c. 1252, p. 4616, § 674, operative July 1, 1978.)

§ 7301. Transfer to institution under jurisdiction of department of corrections

Whenever, in the opinion of the Director of Mental Health and with the approval of the Director of Corrections, any person who has been committed to a state hospital pursuant to provisions of the Penal Code or who has been placed in a state hospital temporarily for observation pursuant to, or who has been committed to a state hospital pursuant to Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of this code needs care and treatment under conditions of custodial security which can be better provided within the Department of Corrections, such person may be transferred for such purposes from an institution under the jurisdiction of the State Department of Mental Health to an institution under the jurisdiction of the Department of Corrections.

Persons so transferred shall not be subject to the provisions of Section 4500, 4501, 4501.5, 4502, 4530, or 4531 of the Penal Code. However, they shall be subject to the general rules of the Director of Corrections and of the facility where they are confined and any correctional employee dealing with such persons during the course of an escape or attempted escape, a fight or a riot, shall have the same rights, privileges and immunities as if the person transferred had been committed to the Director of Corrections.

Whenever a person is transferred to an institution under the jurisdiction of the Department of Corrections pursuant to this section, any report, opinion, or certificate required or authorized to be filed with the court which committed such person to a state hospital, or ordered such person placed therein, shall be prepared and filed with the court by the head of the institution in which the person is actually confined or by the designee of such head.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2690, § 125, operative July 1, 1969; Stats.1969, c. 1128, p. 2194, § 1; Stats.1971, c. 1593, p. 3379, § 458, operative July 1, 1973; Stats.1977, c. 1252, p. 4617, § 675, operative July 1, 1978; Stats.1978, c. 429, p. 1464, § 225, eff. July 17, 1978, operative July 1, 1978.)

§ 7302. Transfer to like institutions; request of relatives or friends; expense

Patients admitted to a state hospital prior to July 1, 1969, and all patients judicially committed or remanded, may be transferred to a like institution at the request of relatives or friends, if there is room in the like institution to which transfer is sought and if the department or departments having jurisdiction over such institutions and the medical directors of the institutions from which and to which the transfer is to be made consent thereto. The expense of such transfer shall be paid by such relatives or friends.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1448, § 56, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1971, c. 1593, p. 3379, § 459, operative July 1, 1973; Stats.1977, c. 1252, p. 4617, § 676, operative July 1, 1978.)

§ 7303. New commitment on transfer absolving county from liability

Whenever a person, committed to the care of the State Department of Mental Health or the State Department of Developmental Services under one of the commitment laws which provides for reimbursement for care and treatment to the state by the county of commitment of such person, is transferred under Section 7300 to an institution under the jurisdiction of the department where the state rather than the county is liable for the support and care of patients, the county of commitment may have the original commitment vacated and a new commitment issued, designating the institution to which the person has been transferred, in order to absolve the county from liability under the original commitment.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3380, § 460, operative July 1, 1973; Stats.1977, c. 1252, p. 4618, § 677, operative July 1, 1978.)

§ 7304. Issuance of new commitment imposing liability on county

Whenever a person, committed to the State Department of Mental Health or the State Department of Developmental Services under one of the commitment laws providing for no reimbursement for care and treatment to the state by the county of commitment, is transferred under Section 6700 to an institution under the jurisdiction of the department where the county is required to reimburse the state for such care and treatment, the State Department of Mental Health or the State Department of Developmental Services may have the original commitment vacated and a new commitment issued, designating the institution to which the person has been transferred, in order to make the county liable for the care and treatment of the committed person to the extent provided by Sections 7511 and 7512 of the Welfare and Institutions Code.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3380, § 461, operative July 1, 1973; Stats.1977, c. 1252, p. 4618, § 678, operative July 1, 1978.)

Article 6 ESCAPES

§ 7325. Apprehension and return; peace officer; notification; information

(a) When any patient committed by a court to a state hospital or other institution on or before June 30, 1969, or when any patient who is judicially committed on or after July 1, 1969, or when any patient who is involuntarily detained pursuant to Part 1 (commencing with Section 5000) of Division 5 escapes from any state hospital, any hospital or facility operated by or under the Veterans' Administration of the United States government, or any facility designated by a county pursuant to Part 1 (commencing with Section 5000) of Division 5, or any facility into which the patient has been placed by his or her conservator appointed pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5, or when a judicially committed patient's return from leave of absence has been authorized or ordered by the State Department of Mental Health, or the State Department of Developmental Services, or the facility of the Veterans' Administration, any peace officer, upon written request of the state hospital, veterans' facility, or the facility designated by a county, or the patient's conservator appointed pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5, shall, without the necessity of a warrant or court order, or any officer or employee of the State Department of Mental Health, or of the State Department of Developmental Services, designated to perform these duties may, apprehend, take into custody, and deliver the patient to the state hospital or to a facility of the Veterans' Administration, or the facility designated by a county, or to any person or place authorized by the State Department of Mental Health, the State Department of Developmental Services, the Veterans' Administration, the local director of the county mental health program of the county in which is located the facility designated by the county, or the patient's conservator appointed pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5, as the case may be, to receive him or her. Every officer or employee of the State Department of Mental Health, or of the State Department of Developmental Services, designated to apprehend or return those patients has the powers and privileges of peace officers so far as necessary to enforce this section.

(b) As used in this section, " peace officer" means a person as specified in Section 830.1 of the Penal Code.

(c) Any officer or employee of a state hospital, hospital or facility operated by or under the Veterans' Administration, or any facility designated by a county pursuant to Part 1 (commencing with Section 5000) of Division 5 shall provide any peace officer with any information concerning any patient who escapes from the hospital or facility that is necessary to assist in the apprehension and return of the patient. The written notification of the escape required by this section shall include the name and physical description of the patient, his or her home address, the degree of dangerousness of the patient, including specific information about the patient if he or she is deemed likely to cause harm to himself or herself or to others, and any additional information that is necessary to apprehend and return the patient. If the escapee has been charged with any crime involving physical harm to children, the notice shall be provided by the law enforcement agency to school districts in the vicinity of the hospital or other facility in which the escapee was being held, in the area the escapee is known or is likely to frequent, and in the area where the escapee resided immediately prior to confinement.

(d) The person in charge of the hospital or facility, or his or her designee, may provide telephonic notification of the escape to the law enforcement agency of the county or city in which the hospital or facility is located. If that notification is given, the time and date of notification, the person notified, and the person making the notification shall be noted in the written notification required by this section.

(e) Photocopying is not required in order to satisfy the requirements of this section.

(f) No public or private entity or public or private employee shall be liable for damages caused, or alleged to be caused, by the release of information or the failure to release information pursuant to this section.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2691, § 129, operative July 1, 1969; Stats.1969, c. 722, p. 1449, § 56.2, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1971, c. 1593, p. 3380, § 463, operative July 1, 1973; Stats.1974, c. 833, p. 1796, § 3; Stats.1975, c. 960, p. 2245,

§ 12; Stats.1977, c. 1252, p. 4618, § 680, operative July 1, 1978; Stats.1979, c. 1142, p. 4169, § 7; Stats.1996, c. 1026 (A.B.2104), § 5; Stats.1997, c. 17 (S.B.947), § 152.)

§ 7325.5. Information essential in aiding apprehension of escapee; release

Notwithstanding Section 5328, information regarding a person's name, reason for commitment, age, physical description, and any other information which the medical director of the treatment facility considers essential in aiding apprehension of the escapee shall be released if the person has escaped from a state mental health facility, and the person was committed to the state mental health facility by a court after being found not guilty by reason of insanity pursuant to Section 1026 of the Penal Code, unable to stand trial due to mental condition pursuant to Section 1370 of the Penal Code, or a mentally disordered sex offender pursuant to Division 6 (commencing with Section 6000).

(Added by Stats.1982, c. 1415, § 2, eff. Sept. 27, 1982.)

§ 7326. Assisting escape; offense

Any person who willfully assists any judicially committed or remanded patient of a state hospital or other public or private mental health facility to escape, to attempt to escape therefrom, or to resist being returned from a leave of absence shall be punished by imprisonment in the state prison, a fine of not more than ten thousand dollars ($10,000), or both such imprisonment and fine; or by imprisonment in a county jail for a period of not more than one year, a fine of not more than two thousand dollars ($2,000), or both such imprisonment and fine.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1969, c. 1021, p. 1989, § 1; Stats.1970, c. 79, p. 92, § 1; Stats.1976, c. 1139, p. 5174, § 346, operative July 1, 1977; Stats.1981, c. 1054, p. 4071, § 5; Stats.1983, c. 1092, § 420, eff. Sept. 27, 1983, operative Jan. 1, 1984.)

§ 7327. Officers' fees and expenses for delivery of patient

Every peace officer who is designated in and pursuant to Section 7325 delivers or assists in the delivery of a patient to a state hospital or other place designated by a state hospital shall be entitled to receive from the state hospital such fees and expenses as are payable to sheriffs for conveyance of patients to state hospitals.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

§ 7328. Offense by patient; commitment to another institution; subsequent cost of care

Whenever a person, committed to an institution subject to the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services under one of the commitment laws which provides for reimbursement[1] for care and treatment to the state by the county of commitment of such person, is accused of committing a crime while confined in such institution and is committed by the court in which the crime is charged to another institution under the jurisdiction of the State Department of Mental Health or the Department of Corrections, the state rather than the county of commitment shall bear the subsequent cost of supporting and caring for such person.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3381, § 464, operative July 1, 1973; Stats.1977, c. 1252, p. 4619, § 681, operative July 1, 1978.)

[1]So in chaptered copy.

§ 7329. Arrest of escapee; hearing; release; commitment

When any patient, who is subject to judicial commitment, has escaped from any public mental hospital in a state of the United States other than California and is present in this state, any peace officer, health officer, county physician, or assistant county physician may take such person into custody within five years after the escape. Such person may be admitted and detained in the quarters provided in any county hospital or state hospital upon application of the peace officer, health officer, county physician, or assistant county physician. The application shall be in writing and shall state the identity of the person, the name and place of the institution from which he escaped and the approximate date of the escape, and the fact that the person has been apprehended pursuant to this section.

As soon as possible after the person is apprehended, the district attorney of the county in which the person is present shall file a petition in the superior court alleging the facts of the escape, and requesting an immediate hearing on the question of whether the person has escaped from a public mental hospital in another state within five years prior to his apprehension. The hearing shall be held within three days after the day on which the person was taken into custody. If the court finds that the person has not escaped from such a hospital within five years prior to his apprehension, he shall be released immediately.

If the court finds that the person did escape from a public mental hospital in another state within five years prior to his apprehension, the superintendent or physician in charge of the quarters provided in such county hospital or state hospital may care for and treat the person, and the district attorney of the county in which such person is present immediately shall present to a judge of the superior court a petition asking that the person be judicially committed to a state hospital in this state. The hearing on the petition shall be held within seven days after the court's determination in the original hearing that the person did escape from a public mental hospital in another state within five years prior to his apprehension. Proceedings shall thereafter be conducted as on a petition for judicial commitment of the particular type of person subject to judicial commitment. If the court finds that the person is subject to judicial commitment it shall order him judicially committed to a state hospital in this state; otherwise, it shall order him to be released. It shall be the duty of the superintendent of the state hospital to accept custody of such person, if he has been determined to be subject to judicial commitment. The State Department of Mental Health will promptly cause such person to be returned to the institution from which he escaped if the authorities in charge of such institution agree to accept him. If such authorities refuse to accept such person, the superintendent of the state hospital in which the person is confined shall continue to care for and treat the person in the same manner as any other person judicially committed to the hospital as mentally disordered.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1970, c. 1627, p. 3456, § 31.5; Stats.1971, c. 1593, p. 3381, § 464.1, operative July 1, 1973; Stats.1977, c. 1252, p. 4620, § 682, operative July 1, 1978.)

Article 7 LEAVE OF ABSENCE, DISCHARGE, AND RESTORATION TO CAPACITY OF PERSONS OTHER THAN THE MENTALLY DISORDERED CRIMINALS

§ 7350. Patients held in criminal proceeding

The provisions of this article except for Section 7355 shall not apply to any patient held upon an order of a court or judge in a proceeding arising out of a criminal action.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1978, c. 1291, p. 4233, § 9.)

§ 7351. Parole defined; recall of patient on leave of absence; certificate of leave or discharge

Wherever in any provision of this code heretofore or hereafter enacted the term "parole" is used in relation to the release of a patient from a state hospital, it shall be construed to refer to and mean "leave of absence." Any judicially committed patient or mentally retarded patient granted a leave of absence on or after July 1, 1969, and any patient on leave of absence as of July 1, 1969, may at any time during the period of the leave of absence be recalled and returned to the hospital.

Upon the release of a judicially committed patient as granted by the medical director of a state hospital, on leave of absence or discharge

upon any of the grounds provided in this article, in accordance with the rules and regulations prescribed by the department, the superintendent shall issue to or on behalf of the judicially committed patient a document stating the general terms or limitations of the leave of absence, or a certificate stating the general condition of or the reason for the discharge of the judicially committed patient.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1449, § 57, eff. Aug. 8, 1969, operative July 1, 1969.)

§ 7352. Grant of leave; state hospital for the mentally disordered; continued services to patients

The medical director of a state hospital for the mentally disordered may grant a leave of absence to any judicially committed patient, except as provided in Section 7350, under general conditions prescribed by the State Department of Mental Health.

The State Department of Mental Health may continue to render services to patients placed on leave of absence prior to July 1, 1969, to the extent such services are authorized by law in effect immediately preceding July 1, 1969.

(Formerly § 6726, Stats.1937, c. 369, p. 1160, § 6726. Amended by Stats.1939, c. 604, p. 2019, § 2; Stats.1946, 1st Ex.Sess., c. 44, p. 67, § 1; Stats.1949, c. 471, p. 819, § 1; Stats.1951, c. 1115, p. 2869, § 1; Stats.1957, c. 2344, p. 4074, § 1; Stats.1961, c. 1267, p. 3045, § 1; Stats.1965, c. 1797, p. 4159, § 44; Stats.1967, c. 360, p. 1585, § 1, eff. June 20, 1967. Renumbered § 7352 and amended by Stats.1968, c. 1374, p. 2685, § 108, eff. July 1, 1969. Amended by Stats.1969, c. 722, p. 1450, § 58, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1971, c. 1593, p. 3382, § 465, operative July 1, 1973; Stats.1977, c. 1252, p. 4621, § 683, operative July 1, 1978.)

§ 7352.5. Grant of leave; state hospital for the developmentally disabled; continued services to patients

The medical director of a state hospital for the developmentally disabled may grant a leave of absence to any developmentally disabled patient or judicially committed patient, except as provided in Section 7350, under general conditions prescribed by the State Department of Developmental Services.

The State Department of Developmental Services may continue to render services to patients placed on leave of absence prior to July 1, 1969, to the extent such services are authorized by law in effect immediately preceding July 1, 1969.

(Added by Stats.1977, c. 1252, p. 4621, § 684, operative July 1, 1978.)

§ 7353. Medicare beneficiaries; payment of third–party health coverage

The State Department of Mental Health shall pay the premium for third–party health coverage for Medicare beneficiaries who are patients at state hospitals under the jurisdiction of the State Department of Mental Health. The department shall, when a mental health state hospital patient's coverage would lapse due to lack of sufficient income or financial resources, or any other reason, continue the health coverage by paying the costs of continuation or group coverage pursuant to federal law or converting from a group to an individual plan.

(Added by Stats.1995, c. 305 (A.B.911), § 8, eff. Aug. 3, 1995.)

§ 7354. Grant of care in private facilities; mentally disordered persons; payments by state; conditions

Any mentally disordered person may be granted care in a licensed institution or other suitable licensed or certified facility. The State Department of Mental Health may pay for such care at a rate not exceeding the average cost of care of patients in the state hospitals as determined by the Director of Mental Health. Such payments shall be made from funds available to the State Department of Mental Health for that purpose.

The State Department of Mental Health may make payments for services for mentally disordered patients in private facilities released or discharged from state hospitals on the basis of reimbursement for reasonable cost, using the same standards and rates consistent with those established by the State Department of Health Services for similar types of care. Such payments shall be made within the limitation of funds appropriated to the State Department of Mental Health for that purpose.

No payments for care or services of a mentally disordered patient shall be made by the State Department of Mental Health pursuant to this section unless such care or services are requested by the local director of the mental health services of the county of the patient's residence, unless provision for such care or services is made in the county Short–Doyle plan of the county under which the county shall reimburse the department for 10 percent of the amount expended by the department, exclusive of such portion of the cost as is provided by the federal government.

The provision for such 10–percent county share shall be inapplicable with respect to any county with a population of under 100,000 which has not elected to participate financially in providing services under Division 5 (commencing with Section 5000) in accordance with Section 5709.5.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1968, c. 957, p. 1842, § 2, eff. Aug. 1, 1968; Stats.1970, c. 1560, p. 3190, § 1; Stats.1970, c. 1561, p. 3192, § 2, operative Jan. 1, 1971; Stats.1971, c. 1593, p. 3382, § 465; Stats.1972, c. 1298, p. 2596, § 1, eff. Dec. 22, 1972; Stats.1973, c. 142, p. 423, § 80, eff. June 30, 1973, operative July 1, 1973; Stats.1973, c. 1203, p. 2592, § 6; Stats.1971, c. 1212, p. 2843, § 343, operative July 1, 1974; Stats.1977, c. 1252, p. 4621, § 685, operative July 1, 1978.)

§ 7354.5. Grant of care in private facilities; developmentally disabled persons; payments by state; conditions

Any developmentally disabled person may be granted care in a licensed institution or other suitably licensed or certified facility. The State Department of Developmental Services may pay for such care at a rate not exceeding the average cost of care of patients in the state hospitals as determined by the Director of Developmental Services. Such payments shall be made from funds available to the State Department of Developmental Services for that purpose.

The State Department of Developmental Services may make payments for services for developmentally disabled patients in private facilities released or discharged from state hospitals on the basis of reimbursement for reasonable cost, using the same standards and rates consistent with those established by the State Department of Developmental Services for similar types of care. Such payments shall be made within the limitation of funds appropriated to the State Department of Developmental Services for that purpose. No payments for care or services of a developmentally disabled person shall be made by the State Department of Developmental Services pursuant to this section, unless requested by the regional center having jurisdiction over the patient and provision for such care or services is made in the areawide plan for the developmentally disabled.

(Added by Stats.1977, c. 1252, p. 4622, § 686, operative July 1, 1978. Amended by Stats.1978, c. 429, p. 1464, § 227, eff. July 17, 1978, operative July 1, 1978.)

§ 7355. Clothing and money

No patient shall be discharged or, granted a leave of absence, or placed on parole or outpatient care from a state hospital without suitable clothing adapted to the season in which he is discharged; and, if it cannot otherwise be obtained, the superintendent, under general conditions prescribed by the department having jurisdiction of the hospital, shall furnish such clothing and money, not exceeding fifty dollars ($50), to defray the necessary expenses of such patient who is going on leave of absence, parole or outpatient care or is to be discharged, until he can reach his relatives or friends, or find employment to earn a subsistence.

The superintendent may, under general conditions prescribed by the department having jurisdiction of the hospital, furnish to patients while on leave of absence such incidental moneys, supplies or

services as are necessary and advisable in the care, supervision and rehabilitation of such patients on leave of absence. Payments therefor shall be made from funds available for support of patients in the state hospital or hospitals from which such patients have been granted a leave of absence.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1968, c. 1127, p. 2141, § 1, operative July 1, 1969; Stats.1971, c. 1593, p. 3383, § 466, operative July 1, 1973; Stats.1977, c. 1252, p. 4621, § 687, operative July 1, 1978; Stats.1978, c. 1291, p. 4234, § 10.)

§ 7356. Liability for expense of keeping patients on leave of absence

The charges for the care and keeping of persons on leave of absence from a state hospital where the State Department of Mental Health, the State Department of Developmental Services, or the State Department of Social Services pays for such care shall be a liability of such person, his estate, and relatives, to the same extent that such liability exists for patients in state hospitals.

The State Department of Mental Health shall collect or adjust such charges in accordance with Article 4 (commencing with Section 7275) of Chapter 3 of this division.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1969, c. 863, p. 1706, § 1; Stats.1971, c. 1593, p. 3384, § 467, operative July 1, 1973; Stats.1973, c. 1212, p. 2843, § 344, operative July 1, 1974; Stats.1977, c. 1252, p. 4623, § 688, operative July 1, 1978.)

§ 7357. Discharge of recovered patients

The superintendent of a state hospital, on filing his written certificate with the Director of Mental Health, may discharge any patient who, in his judgment, has recovered or was not, at time of admission, mentally disordered.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3384, § 468, operative July 1, 1973; Stats.1977, c. 1252, p. 4623, § 689, operative July 1, 1978.)

§ 7359. Discharge of unrecovered patient

The superintendent of a state hospital, on filing his written certificate with the Director of Mental Health, may discharge as improved, or may discharge as unimproved, as the case may be, any judicially committed patient who is not recovered, but whose discharge, in the judgment of the superintendent, will not be detrimental to the public welfare, or injurious to the patient.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3384, § 469, operative July 1, 1973; Stats.1977, c. 1252, p. 4623, § 690, operative July 1, 1978.)

§ 7360. Discharge of indigent patient

The medical superintendent shall not refuse to discharge any judicially committed patient as improved, on the ground that the guardian, friends, or relatives of the patient are not financially able and willing to care properly for the patient after his discharge. Any patient whose condition has improved so as to render him eligible for discharge under Section 7359 and whose guardian, friends, or relatives are not financially able and willing to care properly for him after his discharge shall be returned to the county from which he was committed, at the expense of the county, and shall be cared for by the county as are other indigent persons.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1968, c. 1374, p. 2692, § 132, operative July 1, 1969.)

§ 7361. Court order for discharge of unrecovered patient

When the superintendent is unwilling to certify to the discharge of an unrecovered judicially committed patient, upon request, and so certifies in writing, giving his reasons therefor, any superior judge of the county in which the hospital is situated, upon such certificate, and upon any other proofs produced before him, after affording opportunity for a hearing to the superintendent, may direct, by order, the discharge of the patient, upon such security to the people of the state as he may require for the good behavior and maintenance of the patient. The certificate and the proof, and the order granted thereon, shall be filed in the clerk's office of the county in which the hospital is situated, and a certified copy of the order shall be filed in the hospital from which the patient is discharged.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

§ 7362. Discharge of patients by medical superintendent; return to county of residence; recommitment

The medical superintendent of a state hospital, on filing his written certificate with the Director of Mental Health, may on his own motion, and shall on the order of the State Department of Mental Health, discharge any patient who comes within any of the following descriptions:

(a) Who is not a proper case for treatment therein.

(b) Who is developmentally disabled or is affected with a chronic harmless mental disorder.

Such person, when discharged, shall be returned to the county of his residence at the expense of such county, and delivered to the sheriff or other appropriate county official to be designated by the board of supervisors, for delivery to the official or agency in that county charged with the responsibility for such person. Should such person be a poor and indigent person, he shall be cared for by such county as are other indigent poor.

No person who has been discharged from any state hospital under the provisions of subdivision (b) above shall be again committed to any state hospital for the mentally disordered unless he is subject to judicial commitment.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3384, § 470, operative July 1, 1973; Stats.1977, c. 1252, p. 4623, § 691, operative July 1, 1978; Stats.1978, c. 429, p. 1465, § 228, eff. July 17, 1978, operative July 1, 1978.)

Article 8 DISPOSITION OF MENTALLY DISORDERED CRIMINALS UPON RECOVERY

§ 7375. Progress reports; return to prison

Whenever a convict is received into a state hospital under the provisions of Section 2684 of the Penal Code, the medical director of the state hospital shall, 90 days after the arrival of such person and each six months thereafter, report to the Director of Corrections regarding the status and progress of the person. The convict shall, on recovery, be returned to prison in accordance with the provisions of Section 2685 of the Penal Code.

(Added by Stats.1980, c. 547, p. 1529, § 27.)

Chapter 3 STATE HOSPITALS FOR THE DEVELOPMENTALLY DISABLED

§ 7500. Hospitals established; construction of terms

There are established in the state the following state hospitals for the care and treatment of the developmentally disabled:

(a) Sonoma State Hospital, in Sonoma County.

(b) Lanterman State Hospital, in Los Angeles County.

(c) Porterville State Hospital, in Tulare County.

(d) Fairview State Hospital, in Orange County.

(e) Agnews State Hospital, in Santa Clara County.

(f) Stockton State Hospital, in San Joaquin County.

(g) Camarillo State Hospital, in Ventura County.

Wherever in this code or in any provision of statute heretofore or hereafter enacted the term "home for the feebleminded," "home for the mentally deficient," "state hospital for the mentally deficient," or "state hospital for the mentally retarded" is used, it shall be construed to refer to and mean "state hospital for the developmentally disabled."

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1977, c. 1252, p. 4624, § 693, operative July 1, 1978; Stats.1981, c. 409, p. 1599, § 2, eff. Sept. 11, 1981, operative

July 1, 1982; Stats.1986, c. 224, § 14, eff. June 30, 1986, operative July 1, 1986.)

§ 7501. Ventura County; children's crisis care center; sale or lease of property within boundaries of Camarillo State Hospital; children eligible for placement

(a) The Department of General Services, in cooperation with the State Department of Developmental Services and the State Department of Mental Health, may sell or lease property within the boundaries of Camarillo State Hospital described in subdivision (b) to Ventura County which shall sublet the property to a nonprofit organization for the purpose of constructing and operating a children's crisis care center to provide an alternative to emergency shelter home placement. The facility shall provide for an interagency program for the delivery of medical, educational, and mental health screening, crisis intervention, short–term mental health treatment, and case management services for children who are removed from their families due to abuse, neglect, abandonment, sexual molestation, or who are in acute mental health crisis requiring short–term nonhospital care and supervision described in subdivision (c).

(b) (1) The property is a 22.8 acre portion of Rancho Guadalasca, in the County of Ventura, State of California, as described in the Letters of Patent dated September 1, 1873, recorded in Book 1, Page 153 of Patents, in the office of the County Recorder of the county and described as follows:

Beginning at the northwesterly terminus of the Fourth Course of that parcel described in the deed recorded on June 9, 1932, in Book 358, Page 371 of Official Records, in said Recorder's Office; thence, along said Fourth Course,

1st	—	South 47º23′ 33″ East 1150.00 feet to the northeasterly terminus of the 38th Course of Parcel 1 described in the deed recorded on April 17, 1973, in Book 4101, Page 237 of said Official Records; thence, along said 38th Course,
2nd	—	South 42º37′ 00″ West 1026.00 feet; thence, parallel with the First Course herein,
3rd	—	North 47º23′ 33″ West 800.00 feet; thence, parallel with the Second Course herein,
4th	—	North 42º37′ 00″ East 666.00 feet; thence, parallel with the First Course herein,
5th	—	North 47º23′ 33″ West 350.00 feet to the intersection with the Third Course of said parcel described in the deed recorded in Book 358, Page 371 of said Official Records; thence, along said Third Course,
6th	—	North 42º37′ 00″ East 360.00 feet to the point of beginning.

(2) Notwithstanding any other provision of this section, if the parcel described in this subdivision is purchased or leased from the state, 50 percent of the proceeds shall accrue to the State Department of Mental Health and 50 percent to the Department of Developmental Services.

(3) The Department of General Services may enter into a sale or lease at less than fair market value. The department is authorized to lease the parcel for not less than 40, but not more than 99 years.

(c) Any of the following children are eligible for placement in the children's crisis care center:

(1) Any child who has been placed in protective custody and legally detained under Section 300 as a victim of abuse, neglect, or abandonment. The child shall be one day through 17 years of age. An infant born suffering from the result of perinatal substance abuse, or an infant who requires shelter care because of physical abuse resulting in a cast on the arm or leg shall also be eligible.

(2) Any dependent minor of the juvenile court whose placement has been disrupted, and who is in need of temporary placement, as well as crisis intervention and assessment services.

(3) Any voluntarily placed emotionally disturbed child in crisis as determined appropriate by the mental health case manager. The purpose of this placement is to deescalate the crisis, provide assessment and diagnostic services for a recommendation of appropriate treatment and ongoing placement, and to reduce the utilization of private or state psychiatric hospitalization.

(4) Any eligible child who is a resident of any county in California, subject to the availability of space.

(Added by Stats.1987, c. 777, § 1. Amended by Stats.1991, c. 662 (S.B.254), § 2, eff. Oct. 9, 1991.)

§ 7501.5. Ventura County; residential care program; lease to county of property within boundaries of Camarillo State Hospital; sublease; termination; persons eligible for placement

(a) The Department of General Services, in cooperation with the State Department of Developmental Services and the State Department of Mental Health, may lease property within the boundaries of Camarillo State Hospital described in subdivision (c) to Ventura County, which may sublet the property to one or more responsible organizations selected by Ventura County for the purposes of constructing housing or operating residential care services, or both, designed to meet the identified treatment and rehabilitation needs of mentally disordered persons from Ventura County. The lease between the state and Ventura County shall contain a provision that requires that the lease shall terminate and that full title, possession, and control of the property shall return to the state if permits have not been issued for construction of the housing prior to January 1, 1995. The sublease between Ventura County and the responsible bidder shall contain a provision that requires that permits for construction of the housing be issued prior to January 1, 1995, and shall contain a provision that requires that the sublease shall terminate and full title, possession, and control of the property shall return to the state if permits have not been issued for construction of the housing prior to January 1, 1995.

(b) In selecting a service provider pursuant to subdivision (a), Ventura County shall only consider a sublease with organizations that comply with subdivision (b) of Section 5705 and Section 523 of Title 9 of the California Code of Regulations.

(c)(1) The property consists of a 15 plus acre portion of a 58.5 acre parcel at Camarillo State Hospital that has previously been declared surplus by the State Department of Developmental Services. The acreage is on Lewis Road at the entrance to Camarillo State Hospital. Specific metes and bounds shall be established for the 15 plus acre parcel prior to the actual lease of the property.

(2) The Department of General Services may enter into a lease at less than fair market value. The department is authorized to lease the parcel for not less than 40, and not more than 99, years.

(d) If there is available space, mentally disordered persons from Los Angeles, San Luis Obispo, and Santa Barbara Counties may be eligible for placement at this center if an agreement to that effect is entered into between those counties and Ventura County. The agreement shall specify that Los Angeles, San Luis Obispo, and Santa Barbara Counties shall retain responsibility for monitoring and maintenance of mentally disordered persons placed through those agreements and for payment of costs incurred or services rendered by Ventura County.

(Added by Stats.1988, c. 1468, § 1. Amended by Stats.1989, c. 741, § 2; Stats.1993, c. 239 (S.B.127), § 1, eff. Aug. 2, 1993.)

§ 7502. Porterville state hospital

The state institution, the site for which was provided for by an appropriation made by Chapter 28 of the 55th (Fourth Extraordinary Session) Session of the Legislature, shall be known as Porterville State Hospital and shall be used for epileptics who are developmentally disabled and for other developmentally disabled patients.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1977, c. 1252, p. 4624, § 694, operative July 1, 1978.)

§ 7503. Object of hospital

The object of each hospital is such care, treatment, habilitation, training, and education of the persons committed thereto as will render them more comfortable and happy and better fitted to care for and support themselves.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, § 471, operative July 1, 1973; Stats.1971, c. 1040, p. 1995, § 11.)

§ 7504. Applicable laws

Except as otherwise provided in this chapter the provisions on state institutions in Chapter 2 (commencing with Section 4100) of Part 1 of Division 5 of this code shall apply to the state hospitals for the developmentally disabled.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1977, c. 1252, p. 4624, § 695, operative July 1, 1978.)

§ 7506. Primary purpose of hospital

The primary purpose of each hospital for the developmentally disabled shall be the care, treatment and habilitation of those patients found suitable and duly admitted.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1040, p. 1995, § 13; Stats.1977, c. 1252, p. 4625, § 696, operative July 1, 1978.)

§ 7507. Patients admitted

Subject to the provisions of Section 6509, each state hospital for the developmentally disabled shall admit persons duly committed or transferred thereto in accordance with law.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1977, c. 1252, p. 4625, § 697, operative July 1, 1978.)

§ 7509. Instructions and forms

The State Department of Mental Health and the State Department of Developmental Services shall prescribe and publish instructions and forms, in relation to the commitment and admission of patients, and may include in them such interrogatories as it deems necessary or useful. Such instructions and forms shall be furnished to anyone applying therefor, and shall also be sent in sufficient numbers to the county clerks of the several counties of the state.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3385, § 473, operative July 1, 1973; Stats.1977, c. 1252, p. 4625, § 698, operative July 1, 1978.)

§ 7513. Costs of care and treatment; persons responsible for payment

Each developmentally disabled person and his or her estate shall pay the State Department of Developmental Services for the cost of such person's care and treatment as defined in Section 4431 while in a state hospital and while on leave of absence at state expense, less the sums payable therefor by the county. The provisions of Sections 7513.1 and 7513.2 shall govern the assessment, cancellation, collection, and remission of charges for such care and treatment.

This section shall not be construed to impose any liability on the parents of developmentally disabled persons.

(Formerly § 7011.5, added by Stats.1963, c. 1913, p. 3916, § 25. Amended by Stats.1967, c. 1620, p. 3864, § 11, eff. Aug. 30, 1967. Renumbered § 7513 and amended by Stats.1968, c. 1374, p. 2686, § 115, operative July 1, 1969. Amended by Stats.1977, c. 1252, p. 4625, § 699, operative July 1, 1978; Stats.1979, c. 1142, p. 4170, § 8.)

§ 7513.1. Costs of care and treatment; determination; reduction, cancellation, or remittance upon proof of inability to pay; refunds upon death, etc.; claims against estate

The charge for the care and treatment of all developmentally disabled persons at state hospitals for the developmentally disabled for whom there is liability to pay therefor shall be determined pursuant to Section 4431. The Director of Developmental Services may reduce, cancel, or remit the amount to be paid by the person, estate, or the relative, as the case may be, liable for the care and treatment of any developmentally disabled person who is a patient at a state hospital for the developmentally disabled, on satisfactory proof that the person, estate, or relative, as the case may be, is unable to pay the cost of such care and treatment or that the amount is uncollectible. In any case where there has been a payment under this section, and such payment or any part thereof is refunded because of the death, leave of absence, or discharge of any patient of such hospital, such amount shall be paid by the hospital or the State Department of Developmental Services to the person who made the payment upon demand, and in the statement to the Controller the amounts refunded shall be itemized and the aggregate deducted from the amount to be paid into the State Treasury, as provided by law. If any person dies at any time while his or her estate is liable for his or her care and treatment at a state hospital, the claim for the amount due may be presented to the executor or administrator of his or her estate, and paid as a preferred claim, with the same rank in order of preference, as claims for expenses of last illness.

(Added by Stats.1979, c. 1142, p. 4171, § 9.)

§ 7513.2. Costs of care and treatment; collection responsibilities; developmentally disabled persons eligible for deportation

The State Department of Developmental Services shall collect all the costs and charges mentioned in Section 7513 and may take such action as is necessary to effect their collection within or without the state. The Director of Developmental Services may, however, at his or her discretion, refuse to accept payment of charges for the care and treatment in a state hospital of any developmentally disabled person who is eligible for deportation by the federal immigration authorities.

(Added by Stats.1979, c. 1142, p. 4171, § 10.)

§ 7514. Transfer of patients

The State Department of Developmental Services may transfer any patient of a state hospital for the developmentally disabled to another state hospital for the developmentally disabled, at any time and from time to time, upon the application of the parent, guardian, conservator, or other person charged with the support of such patient, if the expenses of the transfer are paid by the applicant. The liability of any estate, person, or county for the care, support and maintenance of such patient in the institution to which he is transferred shall be the same as if he had originally been committed to such institution.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3386, § 476, operative July 1, 1973; Stats.1977, c. 1252, p. 4625, § 700, operative July 1, 1978; Stats.1979, c. 730, p. 2546, § 170, operative Jan. 1, 1981.)

§ 7515. Peremptory discharge of patients

The medical director may, with the approval of the department having jurisdiction, cause the preemptory[1] discharge of any person who has been a patient for the period of one month.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3386, § 477; Stats.1971, c. 1040, p. 1995, § 15; Stats.1973, c. 142, p. 424, § 82, eff. June 30, 1973, operative July 1, 1973; Stats.1977, c. 1252, p. 4625, § 701, operative July 1, 1978.)

[1]So in chaptered copy.

§ 7516. Life patients in Sonoma state hospital

Nothing in this division contained interferes with or affects the status of such patients as are now in the Sonoma State Hospital under terms of life tenure.

(Added by Stats.1967, c. 1667, p. 4146, § 40, operative July 1, 1969.)

§ 7518. Medical, dental and surgical treatment; consent

In accordance with this section, the medical director of a state hospital with programs for developmentally disabled patients, as defined in Section 4512, may give consent to medical, dental, and surgical treatment of a minor developmentally disabled patient of the

hospital and provide for such treatment to be given to the patient.

If the patient's parent, guardian, or conservator legally authorized to consent to such treatment, does not respond within a reasonable time to the request of the medical director for the granting or denying of consent for such treatment, the medical director may consent, on behalf of the patient, to such treatment and provide for such treatment to be given to the patient.

If the patient has no parent, guardian, or conservator legally authorized to consent to medical, dental, or surgical treatment on behalf of the patient, the medical director may consent to such treatment on behalf of the patient and provide for such treatment to be given to the patient. The medical director may immediately thereupon also request the appropriate regional center for the developmentally disabled to initiate or cause to be initiated proceedings for the appointment of a guardian or conservator legally authorized to consent to medical, dental, or surgical treatment.

If the patient is an adult and has no conservator, consent to treatment may be given by someone other than the patient on the patient's behalf only if the patient is mentally incapable of giving his own consent.

(Added by Stats.1972, c. 1055, p. 1940, § 4. Amended by Stats.1973, c. 546, p. 1068, § 58, eff. Sept. 17, 1973; Stats.1975, c. 694, p. 1651, § 28; Stats.1977, c. 1252, p. 4626, § 702, operative July 1, 1978; Stats.1979, c. 730, p. 2546, § 171, operative Jan. 1, 1981.)

WELFARE AND INSTITUTIONS CODE — MISCELLANEOUS

Division 8 MISCELLANEOUS

Chapter 2 RESEARCH CONCERNING SEXUAL DEVIATION AND SEX CRIMES

§ 8050. Scope

The State Department of Mental Health, acting through the superintendent of the Langley Porter Clinic, shall plan, conduct, and cause to be conducted scientific research into the causes and cures of sexual deviation, including deviations conducive to sex crimes against children, and the causes and cures of homosexuality, and into methods of identifying potential sex offenders.

(Added by Stats.1967, c. 1667, p. 4182, § 42, operative July 1, 1969. Amended by Stats.1977, c. 1252, p. 4626, § 704, operative July 1, 1978.)

§ 8051. Contracts with regents

Upon the recommendation of the superintendent of the Langley Porter Clinic, the State Department of Mental Health may enter into contracts with the Regents of the University of California for the conduct, by either for the other, of all or any portion of the research provided for in this chapter.

(Added by Stats.1967, c. 1667, p. 4182, § 42, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3387, § 498, operative July 1, 1973; Stats.1977, c. 1252, p. 4626, § 705, operative July 1, 1978.)

§ 8052. Cooperation

Each state agency shall cooperate with the superintendent of the Langley Porter Clinic, or with the University of California, as the case may be, to the fullest extent that its facilities will permit without interfering with the carrying out of its primary purposes and functions.

(Added by Stats.1967, c. 1667, p. 4183, § 42, operative July 1, 1969.)

§ 8053. Gifts and grants

The State Department of Mental Health with the approval of the Director of Finance may accept gifts or grants from any source for the accomplishment of the objects and purposes of this chapter. The provisions of Section 16302 of the Government Code do not apply to such gifts or grants and the money so received shall be expended to carry out the purposes of this chapter, subject to any limitation contained in such gift or grant.

(Added by Stats.1967, c. 1667, p. 4183, § 42, operative July 1, 1969. Amended by Stats.1971, c. 1593, p. 3387, § 499, operative July 1, 1973; Stats.1977, c. 1252, p. 4627, § 706, operative July 1, 1978.)

Chapter 3 FIREARMS

§ 8100. Possession, purchase or receipt by person receiving inpatient treatment for a mental disorder or who has communicated a threat of physical violence to a psychotherapist; violation

(a) A person shall not have in his or her possession or under his or her custody or control, or purchase or receive, or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon, if on or after January 1, 1992, he or she has been admitted to a facility and is receiving inpatient treatment and, in the opinion of the attending health professional who is primarily responsible for the patient's treatment of a mental disorder, is a danger to self or others, as specified by Section 5150, 5250, or 5300, even though the patient has consented to that treatment. A person is not subject to this subdivision once he or she is discharged from the facility.

(b)(1) A person shall not have in his or her possession or under his or her custody or control, or purchase or receive, or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon for a period of six months whenever, on or after January 1, 1992, he or she communicates to a licensed psychotherapist, as defined in subdivisions (a) to (e), inclusive, of Section 1010 of the Evidence Code, a serious threat of physical violence against a reasonably identifiable victim or victims. The six–month period shall commence from the date that the licensed psychotherapist reports to the local law enforcement agency the identity of the person making the communication. The prohibition provided for in this subdivision shall not apply unless the licensed psychotherapist notifies a local law enforcement agency of the threat by that person. The person, however, may own, possess, have custody or control over, or receive or purchase any firearm if a superior court, pursuant to paragraph (3) and upon petition of the person, has found, by a preponderance of the evidence, that the person is likely to use firearms or other deadly weapons in a safe and lawful manner.

(2) Upon receipt of the report from the local law enforcement agency pursuant to subdivision (c) of Section 8105, the Department of Justice shall notify by certified mail, return receipt requested, a person subject to this subdivision of the following:

(A) That he or she is prohibited from possessing, having custody or control over, receiving, or purchasing any firearm or other deadly weapon for a period of six months commencing from the date that the licensed psychotherapist reports to the local law enforcement agency the identity of the person making the communication. The notice shall state the date when the prohibition commences and ends.

(B) That he or she may petition a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm.

(3) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, have custody or control over, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or upon its own motion, the superior court may transfer the petition to the county in which the person resided at the time of the statements, or the county in which the person made the statements. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in Section 8105 with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney is notified of the hearing date by the clerk of the court. The court, upon motion of the petitioner establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other provision of law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this paragraph. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court shall order that the person may have custody or control over, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the department shall delete any reference to the prohibition against firearms from the person's state summary criminal history information.

(c) "Discharge," for the purposes of this section, does not include a leave of absence from a facility.

(d) "Attending health care professional," as used in this section, means the licensed health care professional primarily responsible for the person's treatment who is qualified to make the decision that the person has a mental disorder and has probable cause to believe that the person is a danger to self or others.

(e) "Deadly weapon," as used in this section and in Sections 8101, 8102, and 8103, means any weapon, the possession or concealed carrying of which is prohibited by Section 12020 of the Penal Code.

(f) "Danger to self," as used in subdivision (a), means a voluntary person who has made a serious threat of, or attempted, suicide with the use of a firearm or other deadly weapon.

(g) A violation of subdivision (a) of, or paragraph (1) of subdivision (b) of, this section shall be a public offense, punishable by imprisonment in the state prison, or in a county jail for not more than one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(h) The prohibitions set forth in this section shall be in addition to those set forth in Section 8103.

(i) Any person admitted and receiving treatment prior to January 1, 1992, shall be governed by this section, as amended by Chapter 1090 of the Statutes of 1990, until discharged from the facility.

(Added by Stats.1967, c. 1667, p. 4183, § 42, operative July 1, 1969. Amended by Stats.1985, c. 1324, § 2; Stats.1990, c. 9 (A.B.497), § 15; Stats.1990, c. 1090 (S.B.2050), § 4; Stats.1991, c. 951 (A.B.664), § 9; Stats.1991, c. 952 (A.B.1904), § 5; Stats.1992, c. 1326 (A.B.3552), § 16.)

§ 8101. Supplying, selling, giving, or allowing possession or control of firearms or deadly weapons; persons described in § 8100 or 8103; punishment; deadly weapon definition

(a) Any person who shall knowingly supply, sell, give, or allow possession or control of a deadly weapon to any person described in Section 8100 or 8103 shall be punishable by imprisonment in the state prison, or in a county jail for a period of not exceeding one year, by a fine of not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment.

(b) Any person who shall knowingly supply, sell, give, or allow possession or control of a firearm to any person described in Section 8100 or 8103 shall be punished by imprisonment in the state prison for two, three, or four years.

(c) "Deadly weapon," as used in this section has the meaning prescribed by Section 8100.

(Added by Stats.1967, c. 1667, p. 4183, § 42, operative July 1, 1969. Amended by Stats.1969, c. 1021, p. 1989, § 2; Stats.1970, c. 79, p. 93, § 3; Stats.1976, c. 1139, p. 5174, § 348, operative July 1, 1977; Stats.1983, c. 1092, § 421, eff. Sept. 27, 1983, operative Jan. 1, 1984; Stats.1984, c. 1562, § 13; Stats.1985, c. 1324, § 3; Stats.1994, c. 451 (A.B.2470), § 12; Stats.1993–94, 1st Ex.Sess., c. 33 (S.B.36), § 12.)

§ 8102. Confiscation and custody of firearms or other deadly weapons; procedure for return of weapon; notice

(a) Whenever a person, who has been detained or apprehended for examination of his or her mental condition or who is a person described in Section 8100 or 8103, is found to own, have in his or her possession or under his or her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency or peace officer, who shall retain custody of the firearm or other deadly weapon.

"Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

(b) Upon confiscation of any firearm or other deadly weapon from a person who has been detained or apprehended for examination of his or her mental condition, the peace officer or law enforcement agency shall notify the person of the procedure for the return of any firearm or other deadly weapon which has been confiscated.

Where the person is released, the professional person in charge of the facility, or his or her designee, shall notify the person of the procedure for the return of any firearm or other deadly weapon which may have been confiscated.

Health facility personnel shall notify the confiscating law enforcement agency upon release of the detained person, and shall make a notation to the effect that the facility provided the required notice to the person regarding the procedure to obtain return of any confiscated firearm.

(c) Upon the release of a person as described in subdivision (b), the confiscating law enforcement agency shall have 30 days to initiate a petition in the superior court for a hearing to determine whether the return of a firearm or other deadly weapon would be likely to result in endangering the person or others, and to send a notice advising the person of his or her right to a hearing on this issue. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 60 days of the release of the person from a health facility.

(d) If the law enforcement agency does not initiate proceedings within the 30–day period, or the period of time authorized by the court in an ex parte order issued pursuant to subdivision (c), it shall make the weapon available for return.

(e) The law enforcement agency shall inform the person that he or she has 30 days to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond will result in a default order forfeiting the confiscated firearm or weapon. For the purpose of this subdivision, the person's last known address shall be the address provided to the law enforcement officer by the person at the time of the person's detention or apprehension.

(f) If the person responds and requests a hearing, the court clerk shall set a hearing, no later than 30 days from receipt of the request.

The court clerk shall notify the person and the district attorney of the date, time, and place of the hearing.

(g) If the person does not respond within 30 days of the notice, the law enforcement agency may file a petition for order of default.

(Added by Stats.1967, c. 1667, p. 4183, § 42, operative July 1, 1969. Amended by Stats.1979, c. 250, p. 540, § 1; Stats.1979, c. 730, p. 2548, § 174.5, operative Jan. 1, 1981; Stats.1985, c. 1324, § 3.5; Stats.1989, c. 921, § 1, eff. Sept. 27, 1989; Stats.1991, c. 866 (A.B.363), § 8; Stats.1993, c. 606 (A.B.166), § 22, eff. Oct. 1, 1993; Stats.1995, c. 328 (A.B.633), § 1; Stats.2000, c. 254 (S.B.2052), § 2; Stats.2001, c. 159 (S.B.662), § 192.)

§ 8103. Particular persons; weapons restrictions; violations; punishment

Text of section prior to amendment by Stats.1999, c. 578 (A.B.1587), § 1.

(a)(1) No person who after October 1, 1955, has been adjudicated by a court of any state to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control any firearm or any other deadly weapon unless there has been issued to the person a certificate by the court of adjudication upon release from treatment or at a later date stating that the person may possess a firearm or any other deadly weapon without endangering others, and the person has not, subsequent to the issuance of the certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness.

(2) The court shall immediately notify the Department of Justice of the court order finding the individual to be a person described in paragraph (1). The court shall also notify the Department of Justice of any certificate issued as described in paragraph (1).

(b)(1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, carjacking or robbery in which the victim suffers great bodily injury, a violation of Section 451 or 452 of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States that includes all the elements of any of the above felonies as defined under California law, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1).

(c)(1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of any crime other than those described in subdivision (b) shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon unless the court of commitment has found the person to have recovered sanity, pursuant to Section 1026.2 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her sanity.

(d)(1) No person found by a court to be mentally incompetent to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state or the United States, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon, unless there has been a finding with respect to the person of restoration to competence to stand trial by the committing court, pursuant to Section 1372 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be mentally incompetent as described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her competence.

(e)(1) No person who has been placed under conservatorship by a court, pursuant to Section 5350 or the law of any other state or the United States, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon while under the conservatorship if, at the time the conservatorship was ordered or thereafter, the court which imposed the conservatorship found that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. Upon placing any person under conservatorship, and prohibiting firearm or any other deadly weapon possession by the person, the court shall notify the person of this prohibition.

(2) The court shall immediately notify the Department of Justice of the court order placing the person under conservatorship and prohibiting firearm or any other deadly weapon possession by the person as described in paragraph (1). The notice shall include the date the conservatorship was imposed and the date the conservatorship is to be terminated. If the conservatorship is subsequently terminated before the date listed in the notice to the Department of Justice or the court subsequently finds that possession of a firearm or any other deadly weapon by the person would no longer present a danger to the safety of the person or others, the court shall immediately notify the Department of Justice.

(3) All information provided to the Department of Justice pursuant to paragraph (2) shall be kept confidential, separate, and apart from all other records maintained by the department, and shall be used only to determine eligibility to purchase or possess firearms or other deadly weapons. Any person who knowingly furnishes that information for any other purpose is guilty of a misdemeanor. All the information concerning any person shall be destroyed upon receipt by the Department of Justice of notice of the termination of conservatorship as to that person pursuant to paragraph (2).

(f)(1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. A person described in the preceding sentence, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (4), upon petition of the person, found, by a preponderance of the evidence, that the person is likely to use firearms in a safe and lawful manner.

(2) For each person subject to this subdivision, the facility shall immediately, on the date of admission, submit a report to the Department of Justice, on a form prescribed by the department, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

Any report prescribed by this subdivision shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm.

(3) Prior to, or concurrent with, the discharge, the facility shall inform a person subject to this subdivision that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years. Simultaneously, the facility shall inform the person that he or she may petition a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm.

(4) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The People of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney was notified of the hearing date by the clerk of the court. The district attorney may notify the county mental health director of the petition who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state summary criminal history information.

(5) Nothing in this subdivision shall prohibit the use of reports filed pursuant to this section to determine the eligibility of persons to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.

(g)(1) No person who has been certified for intensive treatment under Section 5250, 5260, or 5270.15 shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years.

Any person who meets the criteria contained in subdivision (e) or (f) who is released from intensive treatment shall nevertheless, if applicable, remain subject to the prohibition contained in subdivision (e) or (f).

(2) For each person certified for intensive treatment under paragraph (1), the facility shall immediately submit a report to the Department of Justice, on a form prescribed by the department, containing information regarding the person, including, but not limited to, the legal identity of the person and the legal grounds upon which the person was certified. Any report submitted pursuant to this paragraph shall only be used for the purposes specified in paragraph (2) of subdivision (f).

(3) Prior to, or concurrent with, the discharge of each person certified for intensive treatment under paragraph (1), the facility shall inform the person of that information specified in paragraph (3) of subdivision (f).

(4) Any person who is subject to the prohibition contained in paragraph (1) may fully invoke paragraph (4) of subdivision (f).

(h) For all persons identified in subdivisions (f) and (g), facilities shall report to the Department of Justice as specified in those subdivisions, except facilities shall not report persons under subdivision (g) if the same persons previously have been reported under subdivision (f).

Additionally, all facilities shall report to the Department of Justice upon the discharge of persons from whom reports have been submitted pursuant to subdivision (f) or (g). However, a report shall not be filed for persons who are discharged within 31 days after the date of admission.

(i) Every person who owns or possesses or has under his or her custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of this section shall be punished by imprisonment in the state prison or in a county jail for not more than one year.

(j) "Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

(Added by Stats.1967, c. 1667, p. 4183, § 42, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1452, § 62, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1978, c. 187, p. 419, § 1; Stats.1982, c. 1409, § 1; Stats.1984, c. 1562, § 14; Stats.1985, c. 1324, § 4; Stats.1990, c. 9 (A.B.497), § 16; Stats.1990, c. 177 (S.B.830), § 8, eff. June 27, 1990, operative Jan. 1, 1991; Stats.1991, c. 955 (A.B.242), § 10; Stats. 1992, c. 1326 (A.B.3552), § 17; Stats.1993, c. 610 (A.B.6), § 34, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 38, eff. Oct. 1, 1993; Stats.1994, c. 224 (S.B.1436), § 11; Stats.1996, c. 1075 (S.B.1444), § 21.)

For text of section as amended by Stats.1999, c. 578 (A.B.1587), § 1, see Welfare and Institutions Code § 8103, post.

§ 8103. Particular persons; weapons restrictions; violations; punishment

Text of section as amended by Stats.1999, c. 578 (A.B.1587), § 1.

(a)(1) No person who after October 1, 1955, has been adjudicated by a court of any state to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control any firearm or any other deadly weapon unless there has been issued to the person a certificate by the court of adjudication upon release from treatment or at a later date stating that the person may possess a firearm or any other deadly weapon without endangering others, and the person has not, subsequent to the issuance of the certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness.

(2) The court shall immediately notify the Department of Justice of the court order finding the individual to be a person described in paragraph (1). The court shall also notify the Department of Justice of any certificate issued as described in paragraph (1).

(b)(1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section

207, 209, or 209.5 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, carjacking or robbery in which the victim suffers great bodily injury, a violation of Section 451 or 452 of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States that includes all the elements of any of the above felonies as defined under California law, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1).

(c)(1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of any crime other than those described in subdivision (b) shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon unless the court of commitment has found the person to have recovered sanity, pursuant to Section 1026.2 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be a person described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her sanity.

(d)(1) No person found by a court to be mentally incompetent to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state or the United States, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon, unless there has been a finding with respect to the person of restoration to competence to stand trial by the committing court, pursuant to Section 1372 of the Penal Code or the law of any other state or the United States.

(2) The court shall immediately notify the Department of Justice of the court order finding the person to be mentally incompetent as described in paragraph (1). The court shall also notify the Department of Justice when it finds that the person has recovered his or her competence.

(e)(1) No person who has been placed under conservatorship by a court, pursuant to Section 5350 or the law of any other state or the United States, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon while under the conservatorship if, at the time the conservatorship was ordered or thereafter, the court which imposed the conservatorship found that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. Upon placing any person under conservatorship, and prohibiting firearm or any other deadly weapon possession by the person, the court shall notify the person of this prohibition.

(2) The court shall immediately notify the Department of Justice of the court order placing the person under conservatorship and prohibiting firearm or any other deadly weapon possession by the person as described in paragraph (1). The notice shall include the date the conservatorship was imposed and the date the conservatorship is to be terminated. If the conservatorship is subsequently terminated before the date listed in the notice to the Department of Justice or the court subsequently finds that possession of a firearm or any other deadly weapon by the person would no longer present a danger to the safety of the person or others, the court shall immediately notify the Department of Justice.

(3) All information provided to the Department of Justice pursuant to paragraph (2) shall be kept confidential, separate, and apart from all other records maintained by the Department of Justice, and shall be used only to determine eligibility to purchase or possess firearms or other deadly weapons. Any person who knowingly furnishes that information for any other purpose is guilty of a misdemeanor. All the information concerning any person shall be destroyed upon receipt by the Department of Justice of notice of the termination of conservatorship as to that person pursuant to paragraph (2).

(f)(1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. A person described in the preceding sentence, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (5), found that the People of the State of California have not met their burden pursuant to paragraph (6).

(2) For each person subject to this subdivision, the facility shall immediately, on the date of admission, submit a report to the Department of Justice, on a form prescribed by the Department of Justice, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

Any report prescribed by this subdivision shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm.

(3) Prior to, or concurrent with, the discharge, the facility shall inform a person subject to this subdivision that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years. Simultaneously, the facility shall inform the person that he or she may request a hearing from a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm. The facility shall provide the person with a form for a request for a hearing. The Department of Justice shall prescribe the form. Where the person requests a hearing at the time of discharge, the facility shall forward the form to the superior court unless the person states that he or she will submit the form to the superior court.

(4) The Department of Justice shall provide the form upon request to any person described in paragraph (1). The Department of Justice shall also provide the form to the superior court in each county. A person described in paragraph (1) may make a single request for a hearing at any time during the five–year period. The request for hearing shall be made on the form prescribed by the department or in a document that includes equivalent language.

(5) Any person who is subject to paragraph (1) who has requested a hearing from the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms shall be given a hearing. The clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The People of the State of California shall be the plaintiff in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion,

the superior court may transfer the hearing to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after the request for a hearing, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The court shall set the hearing within 30 days of receipt of the request for a hearing. Upon showing good cause, the district attorney shall be entitled to a continuance not to exceed 14 days after the district attorney was notified of the hearing date by the clerk of the court. If additional continuances are granted, the total length of time for continuances shall not exceed 60 days. The district attorney may notify the county mental health director of the hearing who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section.

(6) The people shall bear the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner.

(7) If the court finds at the hearing set forth in paragraph (5) that the people have not met their burden as set forth in paragraph (6), the court shall order that the person shall not be subject to the five–year prohibition in this section on the ownership, control, receipt, possession or purchase of firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(8) Where the district attorney declines or fails to go forward in the hearing, the court shall order that the person shall not be subject to the five–year prohibition required by this subdivision on the ownership, control, receipt, possession, or purchase of firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall, within 15 days, delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(9) Nothing in this subdivision shall prohibit the use of reports filed pursuant to this section to determine the eligibility of persons to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.

(g)(1) No person who has been certified for intensive treatment under Section 5250, 5260, or 5270.15 shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years.

Any person who meets the criteria contained in subdivision (e) or (f) who is released from intensive treatment shall nevertheless, if applicable, remain subject to the prohibition contained in subdivision (e) or (f).

(2) For each person certified for intensive treatment under paragraph (1), the facility shall immediately submit a report to the Department of Justice, on a form prescribed by the department, containing information regarding the person, including, but not limited to, the legal identity of the person and the legal grounds upon which the person was certified. Any report submitted pursuant to this paragraph shall only be used for the purposes specified in paragraph (2) of subdivision (f).

(3) Prior to, or concurrent with, the discharge of each person certified for intensive treatment under paragraph (1), the facility shall inform the person of that information specified in paragraph (3) of subdivision (f).

(4) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The People of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney was notified of the hearing date by the clerk of the court. The district attorney may notify the county mental health director of the petition, and the county mental health director shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other provision of law, any declaration, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(h) For all persons identified in subdivisions (f) and (g), facilities shall report to the Department of Justice as specified in those subdivisions, except facilities shall not report persons under subdivision (g) if the same persons previously have been reported under subdivision (f).

Additionally, all facilities shall report to the Department of Justice upon the discharge of persons from whom reports have been submitted pursuant to subdivision (f) or (g). However, a report shall not be filed for persons who are discharged within 31 days after the date of admission.

(i) Every person who owns or possesses or has under his or her custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of this section shall be punished by imprisonment in the state prison or in a county jail for not more than one year.

(j) "Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

(Added by Stats.1967, c. 1667, p. 4183, § 42, operative July 1, 1969. Amended by Stats.1969, c. 722, p. 1452, § 62, eff. Aug. 8, 1969, operative July 1, 1969; Stats.1978, c. 187, p. 419, § 1; Stats.1982, c. 1409, § 1; Stats.1984, c. 1562, § 14; Stats.1985, c. 1324, § 4; Stats.1990, c. 9 (A.B.497), § 16; Stats.1990, c. 177 (S.B.830), § 8, eff.

June 27, 1990, operative Jan. 1, 1991; Stats.1991, c. 955 (A.B.242), § 10; Stats. 1992, c. 1326 (A.B.3552), § 17; Stats.1993, c. 610 (A.B.6), § 34, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 38, eff. Oct. 1, 1993; Stats.1994, c. 224 (S.B.1436), § 11; Stats.1996, c. 1075 (S.B.1444), § 21; Stats.1999, c. 578 (A.B.1587), § 1, eff. Sept. 29, 1999.)

Operative Effect

The amendment by Stats.1999, c. 578 (A.B.1587), § 1, shall not go into effect until 30 days after the events specified in § 2 of that Act.

For text of section prior to amendment by Stats.1999, c. 578 (A.B.1587), § 1, see Welfare and Institutions Code § 8103, ante.

§ 8104. Records necessary to identify persons coming within §§ 8100 or 8103; availability to Department of Justice

The State Department of Mental Health shall maintain in a convenient central location and shall make available to the Department of Justice those records that the State Department of Mental Health has in its possession that are necessary to identify persons who come within Section 8100 or 8103. These records shall be made available to the Department of Justice upon request. The Department of Justice shall make these requests only with respect to its duties with regard to applications for permits for, or to carry, or the possession, purchase, or transfer of, explosives as defined in Section 12000 of the Health and Safety Code, devices defined in Section 12001 of the Penal Code, machineguns as defined in Section 12200 of the Penal Code, short–barreled shotguns or short–barreled rifles as defined in Section 12020 of the Penal Code, assault weapons as defined in Section 12276 of the Penal Code, and destructive devices as defined in Section 12301 of the Penal Code, or to determine the eligibility of a person to acquire, carry, or possess a firearm, explosive, or destructive device by a person who is subject to a criminal investigation, a part of which involves the acquisition, carrying, or possession of a firearm by that person. These records shall not be furnished or made available to any person unless the department determines that disclosure of any information in the records is necessary to carry out its duties with respect to applications for permits for, or to carry, or the possession, purchase, or transfer of, explosives, destructive devices, devices as defined in Section 12001 of the Penal Code, short–barreled shotguns, short–barreled rifles, assault weapons, and machineguns, or to determine the eligibility of a person to acquire, carry, or possess a firearm, explosive, or destructive device by a person who is subject to a criminal investigation, a part of which involves the acquisition, carrying, or possession of a firearm by that person.

(Added by Stats.1972, c. 1377, p. 2858, § 123, operative July 1, 1973. Amended by Stats.1977, c. 1252, p. 4627, § 707, operative July 1, 1978; Stats.1982, c. 1409, § 2; Stats.1984, c. 1562, § 15; Stats.1988, c. 1269, § 6; Stats.1990, c. 1090 (S.B.2050), § 5; Stats.1992, c. 1326 (A.B.3552), § 18.)

§ 8105. Submission of information identifying certain persons receiving inpatient treatment for mental disorders; reports by psychotherapists identifying certain persons who have communicated threats of physical violence; confidentiality requirements

(a) The Department of Justice shall request each public and private mental hospital, sanitarium, and institution to submit to the department that information that the department deems necessary to identify those persons who are within subdivision (a) of Section 8100, in order to carry out its duties in relation to firearms, destructive devices, and explosives.

(b) Upon request of the Department of Justice pursuant to subdivision (a), each public and private mental hospital, sanitarium, and institution shall submit to the department that information which the department deems necessary to identify those persons who are within subdivision (a) of Section 8100, in order to carry out its duties in relation to firearms, destructive devices, and explosives.

(c) A licensed psychotherapist shall immediately report to a local law enforcement agency the identity of a person subject to subdivision (b) of Section 8100. Upon receipt of the report, the local law enforcement agency, on a form prescribed by the Department of Justice, shall immediately notify the department of the person who is subject to subdivision (b) of Section 8100.

(d) All information provided to the Department of Justice pursuant to this section shall be kept confidential, separate and apart from all other records maintained by the department. The information provided to the Department of Justice pursuant to this section shall be used only for any of the following purposes:

(1) By the department to determine eligibility of a person to acquire, carry, or possess firearms, destructive devices, or explosives.

(2) For the purposes of the court proceedings described in subdivision (b) of Section 8100 to determine the eligibility of the person who is bringing the petition pursuant to paragraph (3) of subdivision (b) of Section 8100.

(3) To determine the eligibility of a person to acquire, carry, or possess firearms, destructive devices, or explosives who is the subject of a criminal investigation, if a part of the criminal investigation involves the acquisition, carrying, or possession of firearms, explosives, or destructive devices by that person.

(e) Reports shall not be required or requested under this section where the same person has been previously reported pursuant to Section 8103 or 8104.

(Added by Stats.1969, c. 1119, p.2183, § 3, operative July 1, 1971. Amended by Stats.1971, c. 1593, p. 3388, § 501, operative July 1, 1973; Stats.1977, c. 1252, p. 4627, § 708, operative July 1, 1978; Stats.1990, c. 1090 (S.B.2050), § 6; Stats.1991, c. 951 (A.B.664), § 10; Stats.1992, c. 1326 (A.B.3552), § 19.)

§ 8108. Civil liability of health professionals; immunity

Mental hospitals, health facilities, or other institutions, or treating health professionals or psychotherapists who provide reports subject to this chapter shall be civilly immune for making any report required or authorized by this chapter. This section is declaratory of existing law.

(Added by Stats.1991, c. 951 (A.B.664), § 11.)

Division 9 PUBLIC SOCIAL SERVICES

Part 3 AID AND MEDICAL ASSISTANCE

Chapter 7 BASIC HEALTH CARE

Article 4 THE MEDI–CAL BENEFITS PROGRAM

OPERATIVE EFFECT

Operation of Chapter 7 is contingent upon availability of federal funds, see Welfare and Institutions Code § 14020.

§ 14133.225. Prohibition on providing or paying for erectile dysfunction drugs or therapies for registered sex offenders

Notwithstanding any other law, the department shall not provide or pay for any prescription drug or other therapy to treat erectile dysfunction for any person who is required to register pursuant to Section 290 of the Penal Code, except to the extent required under federal law. The department may require from the Department of Justice the information necessary to implement this section.

(Added by Stats.2005, c. 469 (A.B.522), § 3, eff. Oct. 4, 2005.)

Chapter 8.8 MEDI–CAL MANAGEMENT: ALTERNATIVE METHODS

Article 4 ACUTE PSYCHIATRIC HEALTH FACILITY ALLOCATIONS

§ 14640. Allocations of funds to certain counties for mental health services to Medi–Cal eligible persons over 20 years of age; restrictions

(a) The State Department of Mental Health shall allocate funds for the provision of mental health services to Medi–Cal eligible persons over 20 years of age to counties of over one million population that own and operate an acute psychiatric health facility, and in which the number of general acute care hospital psychiatric beds is 50 or less. Counties receiving allocations pursuant to this subdivision may contract with privately operated psychiatric health facilities, or with freestanding psychiatric hospitals which have been certified to provide care to Medi–Cal eligible persons.

(b) Payments made from the allocation established under subdivision (a) shall be made according to state established reimbursement formulas for mental health services, and shall be funded through moneys initially transferred from the State Department of Health Services and subsequently appropriated to the State Department of Mental Health under Item 4440–101–001 of the annual Budget Act.

(c) Allocations made pursuant to subdivision (a) shall not exceed the General Fund share of expenditures made under the Medi–Cal program for acute psychiatric inpatient care units in general acute care hospitals in the subject county during the 1989–90 state fiscal year. Payments shall be made only to the extent that those inpatient units have ceased operation in subsequent years and the capacity has not been replaced by capacity in other general acute care hospitals.

(Added by Stats.1991, c. 1000 (S.B.840), § 2, eff. Oct. 14, 1991.)

Article 5 MENTAL HEALTH MANAGED CARE

§ 14680. Mental health plans; findings, declarations and intent

(a) The Legislature finds and declares that there is a need to establish a standard set of guidelines that governs the provision of managed Medi–Cal mental health services at the local level, consistent with federal law.

(b) Therefore, in order to ensure quality and continuity, and to efficiently utilize mental health services under the Medi–Cal program, there shall be developed mental health plans for the provision of those services that are consistent with guidelines established by the State Department of Mental Health.

(c) It is the intent of the Legislature that mental health plans be developed and implemented regardless of whether other systems of Medi–Cal managed care are implemented.

(d) It is further the intent of the Legislature that Sections 14681 to 14685, inclusive, shall not be construed to mandate the participation of counties in Medi–Cal managed mental health care plans.

(Added by Stats.1994, c. 633 (A.B.757), § 2, eff. Sept.20, 1994. Amended by Stats.1996, c. 190 (S.B.1192), § 3, eff. July 22, 1996.)

§ 14681. Medi–Cal managed care contracts; content

The State Department of Health Services, in consultation with the State Department of Mental Health, shall ensure that all contracts for Medi–Cal managed care include a process for screening, referral, and coordination with any mental health plan established pursuant to Section 14682, of medically necessary mental health care services.

(Added by Stats.1994, c. 633 (A.B.757), § 2.5, eff. Sept. 20, 1994. Amended by Stats.1996, c. 190 (S.B.1192), § 4, eff. July 22, 1996.)

§ 14682. Designated state agency; mental health plans for Medi–Cal beneficiaries; development and implementation; steering committee

(a) Notwithstanding any other provision of state law, and to the extent permitted by federal law, the State Department of Mental Health shall be designated as the state agency responsible for development, consistent with the requirements of Section 4060, and implementation of mental health plans for Medi–Cal beneficiaries.

(b) The department shall convene a steering committee for the purpose of providing advice and recommendations on the development of Medi–Cal mental health managed care systems pursuant to subdivision (a). The committee shall include work groups to advise the department of major issues to be addressed in the managed mental health care plan. Representatives of concerned groups, including, but not limited to, beneficiaries, their families, providers, mental health professionals, statewide representatives of health care service plans, the California Mental Health Planning Council, public and private organizations, and county mental health directors, shall be invited to participate in the steering committee process.

(Added by Stats.1994, c. 633 (A.B.757), § 3, eff. Sept. 20, 1994. Amended by Stats.1996, c. 190 (S.B.1192), § 5, eff. July 22, 1996.)

§ 14683. Content of plans

The State Department of Mental Health shall ensure the following in the development of mental health plans:

(a) That mental health plans include a process for screening, referral, and coordination with other necessary services, including, but not limited to, health, housing, and vocational rehabilitation services. For Medi–Cal eligible children, the mental health plans shall also provide coordination with education programs and any necessary medical or rehabilitative services, including, but not limited to, those provided under the California Children's Services Program (Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code) and the Child Health and Disability Prevention Program (Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code), and those provided by a fee–for–service provider or a Medi–Cal managed care plan. This subdivision shall not be construed to establish any higher level of service from a county than is required under existing law. The county mental health department and the

mental health plan, if it is not the county department, shall not be liable for the failure of other agencies responsible for the provision of nonmental health services to provide those services or to participate in coordination efforts.

(b) That mental health plans include a system of outreach to enable beneficiaries and providers to participate in and access mental health services under the plans, consistent with existing law.

(c) That standards for quality and access developed by the department, in consultation with the steering committee established pursuant to Section 14682, are included in mental health plans.

(Added by Stats.1994, c. 633 (A.B.757), § 4, eff. Sept. 20, 1994. Amended by Stats.1996, c. 190 (S.B.1192), § 6, eff. July 22, 1996; Stats.1996, c. 1023 (S.B.1497), § 483, eff. Sept. 29, 1996.)

§ 14684. Guidelines

Notwithstanding any other provision of state law, and to the extent permitted by federal law, mental health plans, whether administered by public or private entities, shall be governed by the following guidelines:

(a) State and federal Medi–Cal funds identified for the diagnosis and treatment of mental disorders shall be used solely for those purposes. Administrative costs shall be clearly identified and shall be limited to reasonable amounts in relation to the scope of services and the total funds available. Administrative requirements shall not impose costs exceeding funds available for that purpose.

(b) The development of the mental health plan shall include a public planning process that includes a significant role for Medi–Cal beneficiaries, family members, mental health advocates, providers, and public and private contract agencies.

(c) The mental health plan shall include appropriate standards relating to quality, access, and coordination of services within a managed system of care, and costs established under the plan, and shall provide opportunities for existing Medi–Cal providers to continue to provide services under the mental health plan, as long as the providers meet those standards.

(d) Continuity of care for current recipients of services shall be ensured in the transition to managed mental health care.

(e) Medi–Cal covered mental health services shall be provided in the beneficiary's home community, or as close as possible to the beneficiary's home community. Pursuant to the objectives of the rehabilitation option described in subdivision (a) of Section 14021.4, mental health services may be provided in a facility, a home, or other community–based site.

(f) Medi–Cal beneficiaries whose mental or emotional condition results or has resulted in functional impairment, as defined by the department, shall be eligible for covered mental health services. Emphasis shall be placed on adults with serious and persistent mental illness and children with serious emotional disturbances, as defined by the department.

(g) Each mental health plan shall include a mechanism for monitoring the effectiveness of, and evaluating accessibility and quality of, services available. The plan shall utilize and be based upon state–adopted performance outcome measures and shall include review of individual service plan procedures and practices, a beneficiary satisfaction component, and a grievance system for beneficiaries and providers.

(h) Each mental health plan shall provide for culturally competent and age–appropriate services, to the extent feasible. The mental health plan shall assess the cultural competency needs of the program. The mental health plan shall include, as part of the quality assurance program required by Section 4070, a process to accommodate the significant needs with reasonable timeliness. The department shall provide demographic data and technical assistance. Performance outcome measures shall include a reliable method of measuring and reporting the extent to which services are culturally competent and age–appropriate.

(Added by Stats.1994, c. 633 (A.B.757), § 5, eff. Sept. 20, 1994. Amended by Stats.1996, c. 190 (S.B.1192), § 7, eff. July 22, 1996; Stats.1998, c. 346 (A.B.2746), § 3.)

§ 14684.1. Establishment of process for second level treatment authorization request appeals to review and resolve disputes between mental health plans and hospitals; review fees

(a) The State Department of Mental Health shall establish a process for second level treatment authorization request appeals to review and resolve disputes between mental health plans and hospitals.

(b) When the department establishes an appeals process, the department shall comply with all of the following:

(1) The department shall review appeals initiated by hospitals and render decisions on appeals based on findings that are the result of a review of supporting documents submitted by mental health plans and hospitals.

(2) If the department upholds a mental health plan denial of payment of a hospital claim, a review fee shall be assessed on the provider.

(3) If the State Department of Mental Health reverses a mental health plan denial of payment of a hospital claim, a review fee shall be assessed on the mental health plan.

(4) If the department decision regarding a mental health plan denial of payment upholds the claim in part and reverses the claim in part, the department shall prorate the review fee between the parties accordingly.

(c) The amount of the review fees shall be calculated and adjusted annually. The methodology and calculation used to determine the fee amounts shall result in an aggregate fee amount that, in conjunction with any other outside source of funding for this function, may not exceed the aggregate annual costs of providing second level treatment authorization request reviews.

(d) Fees collected by the department shall be retained by the department and used to offset administrative and personnel services costs associated with the appeals process.

(e) The department may use the fees collected, in conjunction with other available appropriate funding for this function, to contract for the performance of the appeals process function.

(Added by Stats.2003, c. 230 (A.B.1762), § 74, eff. Aug. 11, 2003.)

§ 14685. Right of first refusal

Counties shall have the right of first refusal to serve as a mental health plan. If a county elects not to serve as a mental health plan, the State Department of Mental Health shall ensure that these services are provided.

(Added by Stats.1994, c. 633 (A.B.757), § 6, eff. Sept. 20, 1994. Amended by Stats.1996, c. 190 (S.B.1192), § 8, eff. July 22, 1996.)

Chapter 11 ELDER ABUSE AND DEPENDENT ADULT CIVIL PROTECTION ACT

Article 3 MANDATORY AND NONMANDATORY REPORTS OF ABUSE

§ 15630. Mandated reporters; known or suspected abuse; telephone reports; failure to report; impeding or inhibiting report; penalties

(a) Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(b)(1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed

or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as practicably possible, and by written report sent within two working days, as follows:

(A) If the abuse has occurred in a long–term care facility, except a state mental health hospital or a state developmental center, the report shall be made to the local ombudsperson or the local law enforcement agency.

Except in an emergency, the local ombudsperson and the local law enforcement agency shall, as soon as practicable, do all of the following:

(i) Report to the State Department of Health Services any case of known or suspected abuse occurring in a long–term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(ii) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or in an adult day care facility, as defined in paragraph (2) of subdivision (a) of Section 1502.

(iii) Report to the State Department of Health Services and the California Department of Aging any case of known or suspected abuse occurring in an adult day health care center, as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

(iv) Report to the Bureau of Medi–Cal Fraud and Elder Abuse any case of known or suspected criminal activity.

(B) If the suspected or alleged abuse occurred in a state mental hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services, or to the local law enforcement agency.

Except in an emergency, the local law enforcement agency shall, as soon as practicable, report any case of known or suspected criminal activity to the Bureau of Medi–Cal Fraud and Elder Abuse.

(C) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2)(A) A mandated reporter who is a clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not subject to paragraph (1). For purposes of this subdivision, "penitential communication" means a communication that is intended to be in confidence, including, but not limited to, a sacramental confession made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization is authorized or accustomed to hear those communications and under the discipline tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(B) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected elder and dependent adult abuse when he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective services agency.

(C) Notwithstanding any other provision in this section, a clergy member who is not regularly employed on either a full–time or part–time basis in a long–term care facility or does not have care or custody of an elder or dependent adult shall not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.

(3)(A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident where all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court–ordered conservatorship because of a mental illness or dementia.

(iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(4)(A) In a long–term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Health Services determines, upon approval by the Bureau of Medi–Cal Fraud and Elder Abuse and the state long–term care ombudsperson, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c)(1) Any mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult, or that his or her emotional well–being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long–term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long–term care ombudsperson program. Except in an emergency, the local ombudsperson shall report any case of known or suspected abuse to the State Department of Health Services and any case of known or suspected criminal activity to the Bureau of Medi–Cal Fraud and Elder Abuse, as soon as is practicable.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services or to a local law enforcement agency or to the local ombudsperson. Except in an emergency, the local ombudsperson and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi–Cal Fraud and Elder Abuse, as soon as is practicable.

(4) If the suspected or alleged abuse occurred in a place other than

a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include, if known, the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other adult responsible for the elder's or dependent adult's care, the nature and extent of the elder's or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, as requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(g)(1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide to that law enforcement agency a copy of its investigative report concerning the reported matter.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report, or impeding or inhibiting a report of, physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report, or impedes or inhibits a report of, physical abuse, as defined in Section 15610. 63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a law enforcement agency specified in paragraph (1) of subdivision (b) of Section 15630 of the Welfare and Institutions Code discovers the offense.

(i) For purposes of this section, "dependent adult" shall have the same meaning as in Section 15610.23.

(Added by Stats.1994, c. 594 (S.B.1681), § 7. Amended by Stats.1995, c. 813 (A.B.1836), § 1; Stats.1998, c. 946 (S.B.2199), § 8; Stats.1998, c. 980 (A.B.1780), § 1; Stats.1999, c. 236 (A.B.739), § 1; Stats.2002, c. 54 (A.B.255), § 9; Stats.2004, c. 823 (A.B.20), § 19; Stats.2005, c. 163 (A.B.1188), § 2.)

§ 15630.1. Mandated reporter of suspected financial abuse of an elder or dependent adult; definitions and reporting requirements

(a) As used in this section, "mandated reporter of suspected financial abuse of an elder or dependent adult" means all officers and employees of financial institutions.

(b) As used in this section, the term "financial institution" means any of the following:

(1) A depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

(2) An institution–affiliated party, as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).

(3) A federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752), including, but not limited to, an institution–affiliated party of a credit union, as defined in Section 206(r) of the Federal Credit Union Act (12 U.S.C. Sec. 1786(r)).

(c) As used in this section, "financial abuse" has the same meaning as in Section 15610.30.

(d)(1) Any mandated reporter of suspected financial abuse of an elder or dependent adult who has direct contact with the elder or dependent adult or who reviews or approves the elder or dependent adult's financial documents, records, or transactions, in connection with providing financial services with respect to an elder or dependent adult, and who, within the scope of his or her employment or professional practice, has observed or has knowledge of an incident, that is directly related to the transaction or matter that is within that scope of employment or professional practice, that reasonably appears to be financial abuse, or who reasonably suspects that abuse, based solely on the information before him or her at the time of reviewing or approving the document, record, or transaction in the case of mandated reporters who do not have direct contact with the elder or dependent adult, shall report the known or suspected instance of financial abuse by telephone immediately, or as soon as practicably possible, and by written report sent within two working days to the local adult protective services agency or the local law enforcement agency.

(2) When two or more mandated reporters jointly have knowledge or reasonably suspect that financial abuse of an elder or a dependent adult for which the report is mandated has occurred, and when there is an agreement among them, the telephone report may be made by a member of the reporting team who is selected by mutual agreement. A single report may be made and signed by the selected member of the reporting team. Any member of the team who has knowledge that the member designated to report has failed to do so shall thereafter make that report.

(3) If the mandated reporter knows that the elder or dependent adult resides in a long–term care facility, as defined in Section 15610.47, the report shall be made to the local ombudsman or local law enforcement agency.

(e) An allegation by the elder or dependent adult, or any other person, that financial abuse has occurred is not sufficient to trigger the reporting requirement under this section if both of the following conditions are met:

(1) The mandated reporter of suspected financial abuse of an elder or dependent adult is aware of no other corroborating or independent evidence of the alleged financial abuse of an elder or dependent adult. The mandated reporter of suspected financial abuse of an elder or dependent adult is not required to investigate any accusations.

(2) In the exercise of his or her professional judgment, the mandated reporter of suspected financial abuse of an elder or dependent adult reasonably believes that financial abuse of an elder or dependent adult did not occur.

(f) Failure to report financial abuse under this section shall be subject to a civil penalty not exceeding one thousand dollars ($1,000) or if the failure to report is willful, a civil penalty not exceeding five thousand dollars ($5,000), which shall be paid by the financial institution that is the employer of the mandated reporter to the party bringing the action. Subdivision (h) of Section 15630 shall not apply to violations of this section.

(g)(1) The civil penalty provided for in subdivision (f) shall be recovered only in a civil action brought against the financial institution by the Attorney General, district attorney, or county counsel. No action shall be brought under this section by any person other than the Attorney General, district attorney, or county counsel. Multiple actions for the civil penalty may not be brought for the same violation.

(2) Nothing in the Financial Elder Abuse Reporting Act of 2005 shall be construed to limit, expand, or otherwise modify any civil liability or remedy that may exist under this or any other law.

(h) As used in this section, "suspected financial abuse of an elder or dependent adult" occurs when a person who is required to report under subdivision (a) observes or has knowledge of behavior or unusual circumstances or transactions, or a pattern of behavior or unusual circumstances or transactions, that would lead an individual with like training or experience, based on the same facts, to form a reasonable belief that an elder or dependent adult is the victim of financial abuse as defined in Section 15610.30.

(i) Reports of suspected financial abuse of an elder or dependent adult made by an employee or officer of a financial institution pursuant to this section are covered under subdivision (b) of Section 47 of the Civil Code.

(j) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

(Added by Stats.2005, c. 140 (S.B.1018), § 4, operative Jan. 1, 2007.)

Part 4 SERVICES FOR THE CARE OF CHILDREN

Chapter 1 FOSTER CARE PLACEMENT

§ 16001.9. Rights of children in foster care

(a) It is the policy of the state that all children in foster care shall have the following rights:

(1) To live in a safe, healthy, and comfortable home where he or she is treated with respect.

(2) To be free from physical, sexual, emotional, or other abuse, or corporal punishment.

(3) To receive adequate and healthy food, adequate clothing, and, for youth in group homes, an allowance.

(4) To receive medical, dental, vision, and mental health services.

(5) To be free of the administration of medication or chemical substances, unless authorized by a physician.

(6) To contact family members, unless prohibited by court order, and social workers, attorneys, foster youth advocates and supporters, Court Appointed Special Advocates (CASA), and probation officers.

(7) To visit and contact brothers and sisters, unless prohibited by court order.

(8) To contact the Community Care Licensing Division of the State Department of Social Services or the State Foster Care Ombudsperson regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.

(9) To make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order.

(10) To attend religious services and activities of his or her choice.

(11) To maintain an emancipation bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan.

(12) To not be locked in any room, building, or facility premises, unless placed in a community treatment facility.

(13) To attend school and participate in extracurricular, cultural, and personal enrichment activities, consistent with the child's age and developmental level.

(14) To work and develop job skills at an age–appropriate level * * *, consistent with state law.

(15) To have social contacts with people outside of the foster care system, such as teachers, church members, mentors, and friends.

(16) To attend Independent Living Program classes and activities if he or she meets age requirements.

(17) To attend court hearings and speak to the judge.

(18) To have storage space for private use.

(19) To be involved in the development of his or her own case plan and plan for permanent placement.

(20) To review his or her own case plan and plan for permanent placement if he or she is * * * 12 years of age or older and in a permanent placement, and to receive information about his or her out–of– home placement and case plan, including being told of changes to the plan.

(21) To be free from unreasonable searches of personal belongings.

(22) To confidentiality of all juvenile court records consistent with existing law.

(23) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(24) At 16 years of age or older, to have access to existing information regarding the educational options available, including, but not limited to, the coursework necessary for vocational and postsecondary educational programs, and information regarding financial aid for postsecondary education.

(b) Nothing in this section shall be interpreted to require a foster care provider to take any action that would impair the health and safety of children in out–of–home placement.

(c) The State Department of Social Services and each county welfare department are encouraged to work with the Student Aid Commission, the University of California, the California State University, and the California Community Colleges to receive information pursuant to paragraph (23) of subdivision (a).

(Added by Stats.2001, c. 683 (A.B.899), § 3. Amended by Stats.2003, c. 331 (A.B.458), § 5; Stats.2004, c. 668 (S.B.1639), § 5; Stats.2005, c. 640 (A.B.1412), § 9.)

Part 5 COUNTY AID AND RELIEF TO INDIGENTS

Application

Application of Part 5 during an economic emergency, see Welfare and Institutions Code §§ 18451, 18452.

Chapter 6 STATE AND LOCAL FUND ALLOCATIONS

Operative Effect

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see § 209 of that act, as amended by Stats.1993, c. 728 (A.B.1728), § 6.

Application

Application of Part 5 during an economic emergency, see Welfare and Institutions Code §§ 18451, 18452.

Explanatory Note

For another Chapter 6, Unemployed or Displaced Workers, added by Stats.1988, c. 90, § 1, see Welfare and Institutions Code § 17500 et seq.

Article 1 FUNDING ALLOCATIONS

Operative Effect

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see § 209 of that act, as amended by Stats.1993, c. 728 (A.B.1728), § 6.

Application

Part 5 is not applicable during an economic emergency, see Welfare and Institutions Code § 18452.

§ 17600. Local Revenue Fund; accounts; appropriations

(a) There is hereby created the Local Revenue Fund, which shall have all of the following accounts:

(1) The Sales Tax Account.

(2) The Vehicle License Fee Account.

(3) The Vehicle License Collection Account.

(4) The Sales Tax Growth Account.

(5) The Vehicle License Fee Growth Account.

(b) The Sales Tax Account shall have all of the following subaccounts:

(1) The Mental Health Subaccount.

(2) The Social Services Subaccount.

(3) The Health Subaccount.

(c) The Sales Tax Growth Account shall have all of the following subaccounts:

(1) The Caseload Subaccount.

(2) The Base Restoration Subaccount.

(3) The Indigent Health Equity Subaccount.

(4) The Community Health Equity Subaccount.

(5) The Mental Health Equity Subaccount.

(6) The State Hospital Mental Health Equity Subaccount.

(7) The County Medical Services Subaccount.

(8) The General Growth Subaccount.

(9) The Special Equity Subaccount.

(d) Notwithstanding Section 13340 of the Government Code, the Local Revenue Fund is hereby continuously appropriated, without regard to fiscal years, for the purpose of this chapter.

(e) The Local Revenue Fund shall be invested in the Surplus Money Investment Fund and all interest earned shall be distributed in January and July among the accounts and subaccounts in proportion to the amounts deposited into each subaccount, except as provided in subdivision (f).

(f) If a distribution required by subdivision (e) would cause a subaccount to exceed its limitations imposed pursuant to any of the following, the distribution shall be made among the remaining subaccounts in proportion to the amounts deposited into each subaccount in the six prior months:

(1) Subdivision (a) of Section 17605.

(2) Paragraph (1) of subdivision (a) of Section 17605.05.

(3) Subdivision (b) of Section 17605.10.

(4) Subdivision (c) of Section 17605.10.

(Added by Stats.1991, c. 89 (A.B.1288), § 201.5, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 86, eff. Oct. 7, 1991; Stats.1992, c. 720 (A.B.2476), § 2, eff. Sept. 15, 1992; Stats.1993, c. 69 (S.B.35), § 62, eff. June 30, 1993; Stats.1993, c. 100 (S.B.463), § 7, eff. July 13, 1993; Stats.1998, c. 642 (S.B.1648), § 1; Stats.1999, c. 90 (A.B.1682), § 10, eff. July 12, 1999.)

§ 17600.10. Local health and welfare trust funds; accounts

(a) Each county and city and county receiving funds in accordance with this chapter shall establish and maintain a local health and welfare trust fund comprised of the following accounts:

(1) The mental health account.

(2) The social services account.

(3) The health account.

(b) Each city receiving funds in accordance with this chapter shall establish and maintain a local health and welfare trust fund comprised of a health account and a mental health account.

(Added by Stats.1991, c. 89 (A.B.1288), § 201.5, eff. June 30, 1991. Amended by Stats.1993, c. 728 (A.B.1728), § 3, eff. Oct. 4, 1993.)

§ 17600.15. Allocation of deposits in Local Revenue Fund

(a) Of the sales tax proceeds from revenues collected in the 1991–92 fiscal year which are deposited to the credit of the Local Revenue Fund, 51.91 percent shall be credited to the Mental Health Subaccount, 36.17 percent shall be credited to the Social Services Subaccount, and 11.92 percent shall be credited to the Health Subaccount of the Sales Tax Account.

(b) For the 1992–93 fiscal year and fiscal years thereafter, of the sales tax proceeds from revenues deposited to the credit of the Local Revenue Fund, the Controller shall make monthly deposits to the Mental Health Subaccount, the Social Services Subaccount, and the Health Subaccount of the Sales Tax Account until the deposits equal the amounts that were allocated to counties, cities, and cities and counties mental health accounts, social services accounts, and health accounts, respectively, of the local health and welfare trust funds in the prior fiscal year pursuant to this chapter from the Sales Tax Account and the Sales Tax Growth Account. Any excess sales tax revenues received pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code shall be deposited in the Sales Tax Growth Account of the Local Revenue Fund.

(Added by Stats.1991, c. 89 (A.B.1288), § 201.5, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 87, eff. Oct. 7, 1991; Stats.1993, c. 100 (S.B.463), § 8, eff. July 13, 1993.)

§ 17600.20. Local health and welfare trust fund; accounts; reallocation of money

(a) Any county or city or city and county may reallocate money among accounts in the local health and welfare trust fund, not to exceed 10 percent of the amount deposited in the account from which the funds are reallocated for that fiscal year.

(b) After depositing funds to the social services account allocated to a county or city and county pursuant to Section 17605 and after reallocating funds from both the health account and mental health account of the local health and welfare trust fund under subdivision (a), a county may reallocate up to an additional 10 percent of the money from the health account to the social services account in the 1992–93 fiscal year and fiscal years thereafter, for caseload increases for mandated social services programs listed in paragraph (2) of subdivision (b) of Section 17605 in excess of revenue growth in the social services account.

(c)(1) A county or city or city and county shall, at a regularly scheduled public hearing of its governing body, document that any decision to make any substantial change in its allocation of mental health, social services, or health trust fund moneys among services, facilities, programs, or providers as a result of reallocating funds pursuant to subdivision (a), (b), or (d) was based on the most cost–effective use of available resources to maximize client outcomes.

(2) Any county or city and county that reallocates funds pursuant to subdivision (b) shall document, at a regularly scheduled public hearing of the board of supervisors, that the net social services caseload has increased beyond the revenue growth in the social services account.

(3) Any county, city, or city and county that is required to document any reallocation of funds pursuant to paragraphs (1) and (2) shall forward a copy of the documentation to the Controller. The Controller shall make copies of the documentation available to the Legislature and to other interested parties, upon request.

(d) In addition to subdivision (a), a county or city and county may reallocate up to an additional 10 percent of the money from the social

services account to the mental health account or the health account in the 1993–94 fiscal year and fiscal years thereafter when there exist in the social services account revenues in excess of the amount necessary to fund mandated caseload costs, pursuant to paragraph (2) of subdivision (b) of Section 17605, as determined by the county board of supervisors, as a result of implementation of personal care services or other program changes.

(Added by Stats.1991, c. 89 (A.B.1288), § 201.5, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 88, eff. Oct. 7, 1991; Stats.1993, c. 100 (S.B.463), § 9, eff. July 13, 1993.)

Article 2 MENTAL HEALTH ALLOCATIONS

Operative Effect

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see § 209 of that act, as amended by Stats.1993, c. 728 (A.B.1728), § 6.

Application

Application of Part 5 during an economic emergency, see Welfare and Institutions Code §§ 18451, 18452.

§ 17601. Schedule of allocations; reimbursements

On or before the 27th day of each month, the Controller shall allocate to the mental health account of each local health and welfare trust fund the amounts deposited and remaining unexpended and unreserved on the 15th day of the month in the Mental Health Subaccount of the Sales Tax Account in the Local Revenue Fund in accordance with the following schedules:

(a)(1) Schedule A State Hospital and Community Mental Health Allocations.

Jurisdiction	Allocation Percentage
Alameda	4.882
Alpine	0.018
Amador	0.070
Butt	0.548
Calaveras	0.082
Colusa	0.073
Contra Costa	2.216
Del Norte	0.088
El Dorado	0.285
Fresno	2.045
Glenn	0.080
Humboldt	0.465
Imperial	0.342
Inyo	0.104
Kern	1.551
Kings	0.293
Lake	0.167
Lassen	0.087
Los Angeles	28.968
Madera	0.231
Marin	0.940
Mariposa	0.054
Mendocino	0.332
Merced	0.546
Modoc	0.048
Mono	0.042
Monterey	0.950
Napa	0.495
Nevada	0.191
Orange	4.868
Placer	0.391
Plumas	0.068
Riverside	2.394
Sacramento	3.069
San Benito	0.090
San Bernardino	3.193
San Diego	5.603
San Francisco	4.621
San Joaquin	1.655
San Luis Obispo	0.499
San Mateo	2.262
Santa Barbara	0.949
Santa Clara	4.112
Santa Cruz	0.558
Shasta	0.464
Sierra	0.026
Siskiyou	0.137
Solano	1.027
Sonoma	1.068
Stanislaus	1.034
Sutter/Yuba	0.420
Tehama	0.181
Trinity	0.055
Tulare	0.941
Tuolumne	0.121
Ventura	1.472
Yolo	0.470
Berkeley	0.190
Tri–City	0.165

The amounts allocated in accordance with Schedule A for the 1991–92 fiscal year shall be considered the base allocations for the 1992–93 fiscal year.

(2) The funds allocated pursuant to Schedule B shall be increased to reflect the addition of percentages for the Institute for Mental Disease allocation pursuant to paragraph (1) of subdivision (c).

(3) The Controller shall allocate three million seven hundred thousand dollars ($3,700,000) to the counties pursuant to a percentage schedule developed by the Director of Mental Health as specified in subdivision (c) of Section 4095. The funds allocated pursuant to Schedule A shall be increased to reflect the addition of this schedule.

(4)(A) The department may amend Schedule A in order to restore counties funds associated with multicounty regional programs.

(B) Notwithstanding any other provision of law, the department shall amend Schedule A for the purpose of establishing mental health base allocations for each county for the 1994–95 fiscal year and fiscal years thereafter, in order to ensure that mental health base allocations for each county do not fall below 75 percent of the allocations for the 1989–90 fiscal year. The money specified in subdivision (c) of Section 17605.05 shall be used for this purpose.

(b)(1) Schedule B State Hospital Payment Schedule.

From the amounts allocated in accordance with Schedule A, each county and city shall reimburse the Controller for reimbursement to the State Department of Mental Health, for the 1991–92 fiscal year only, an amount equal to one–ninth of the amount identified in Schedule B as modified to reflect adjustments pursuant to paragraph (2) of subdivision (a) of Section 4330. The reimbursements shall be due the 24th day of each month and the first payment shall be due on October 24, 1991. During the 1992–93 fiscal year and fiscal years thereafter, each monthly reimbursement shall be one–twelfth of the total amount of the county's contract with the department for state hospital services.

Jurisdiction	First Year State Hospital Withholding
Alameda	$ 15,636,372
Berkeley City	0
Alpine	95,379
Amador	148,915
Butte	650,238
Calaveras	100,316
Colusa	189,718
Contra Costa	8,893,339
Del Norte	94,859
El Dorado	236,757
Fresno	1,429,379
Glenn	51,977
Humboldt	727,684
Imperial	259,887
Inyo	363,842
Kern	4,024,613
Kings	266,904
Lake	292,373

Jurisdiction	First Year State Hospital Withholding
Lassen	167,367
Los Angeles	102,458,700
Tri–City	0
Madera	131,243
Marin	3,248,590
Mariposa	117,989
Mendocino	471,955
Merced	404,125
Modoc	94,859
Mono	94,859
Monterey	2,079,097
Napa	2,338,985
Nevada	493,786
Orange	14,066,133
Placer	847,232
Plumas	130,463
Riverside	4,891,077
Sacramento	4,547,506
San Benito	259,887
San Bernardino	5,587,574
San Diego	6,734,976
San Francisco	23,615,688
San Joaquin	927,018
San Luis Obispo	719,887
San Mateo	6,497,179
Santa Barbara	2,168,758
Santa Clara	7,106,095
Santa Cruz	1,403,391
Shasta	1,169,492
Sierra	94,859
Siskiyou	129,944
Solano	5,332,885
Sonoma	2,669,041
Stanislaus	1,740,205
Sutter/Yuba	363,842
Tehama	363,842
Trinity	94,859
Tulare	675,707
Tuolumne	304,328
Ventura	3,378,533
Yolo	1,169,492

(2)(A)(i) During the 1992–93 fiscal year, in lieu of making the reimbursement required by paragraph (1), a county may elect to authorize the Controller to reimburse the State Hospital Account of the Mental Health Facilities Fund a pro rata share each month computed by multiplying the ratio of the reimbursement amount owed by the county as specified in Schedule B to the total amount of money projected to be allocated to the county pursuant to Schedule A by the funds available for deposit in the mental health account of the county's health and welfare trust fund.

(ii) The reimbursement shall be made monthly on the same day the Controller allocates funds to the local health and welfare trust funds.

(B) During the 1992–93 fiscal year and thereafter, the amount to be reimbursed each month shall be computed by multiplying the ratio of the county's contract for state hospital services to the amount of money projected to be allocated to the county pursuant to Schedule A by the funds available for deposit in the mental health account of the county's health and welfare trust fund.

(C) All reimbursements, deposits, and transfers made to the Mental Health Facilities Fund pursuant to a county election shall be deemed to be deposits to the local health and welfare trust fund.

(3)(A) Counties shall notify the Controller, in writing, by October 15, 1991, upon making the election pursuant to paragraph (2). The election shall be binding for the fiscal year. The pro rata share of allocations made prior to the election by the county shall be withheld from allocations in subsequent months until paid.

(B) For the 1992–93 fiscal year and fiscal years thereafter, counties shall notify the Controller, in writing, by July 1 of the fiscal year for which the election is made, upon making the election pursuant to paragraph (2).

(4) Regardless of the reimbursement option elected by a county, no county shall be required to reimburse the Mental Health Facilities Fund by an amount greater than the amount identified in Schedule B as modified to reflect adjustments pursuant to paragraph (2) of subdivision (a) of Section 4330.

(c)(1) For the 1991–92 fiscal year, the Controller shall distribute monthly beginning in October from the Mental Health Subaccount of the Sales Tax Account of the Local Revenue Fund to the mental health account of each local health and welfare trust fund one–ninth of the amount allocated to the county in accordance with the institutions for mental disease allocation schedule established by the State Department of Mental Health.

(2) Each county shall forward to the Controller, monthly, an amount equal to one–ninth of the amount identified in the schedule established by the State Department of Mental Health. The reimbursements shall be due by the 24th day of the month to which they apply, and the first payment shall be due October 24, 1991. These amounts shall be deposited in the Institutions for Mental Disease Account in the Mental Health Facilities Fund.

(3)(A)(i) During the 1991–92 fiscal year, in lieu of making the reimbursement required by paragraph (1), a county may elect to authorize the Controller to reimburse the Institutions for Mental Disease Account of the Mental Health Facilities Fund a pro rata share each month computed by multiplying the ratio of the reimbursement amount owed by the county as specified in Schedule B to the total amount of money projected to be allocated to the county pursuant to Schedule A by the funds available for deposit in the mental health account of the county's health and welfare trust fund.

(ii) The reimbursement shall be made monthly on the same day the Controller allocates funds to the local health and welfare trust funds.

(B) During the 1992–93 fiscal year and thereafter, the amount to be reimbursed each month shall be computed by multiplying the ratio of the county's contract for mental health services to the amount of money projected to be allocated to the county pursuant to Schedule A by the funds available for deposit in the mental health account of the county's health and welfare trust fund.

(C) All reimbursements, deposits, and transfers made to the Mental Health Facilities Fund pursuant to a county election shall be deemed to be deposits to the local health and welfare trust fund.

(4)(A) Counties shall notify the Controller, in writing, by October 15, 1991, upon making the election pursuant to paragraph (3). The election shall be binding for the fiscal year. The pro rata share of allocations made prior to the election by the county shall be withheld from allocations in subsequent months until paid.

(B) For the 1992–93 fiscal year and fiscal years thereafter, counties shall notify the Controller, in writing, by July 1 of the fiscal year for which the election is made, upon making the election pursuant to paragraph (2).

(5) Regardless of the reimbursement option elected by a county, no county shall be required to reimburse the Institutions for Mental Disease Account in the Mental Health Facilities Fund an amount greater than the amount identified in the schedule developed by the State Department of Mental Health pursuant to paragraph (1).

(d) The Controller shall withhold the allocation of funds pursuant to subdivision (a) in any month a county does not meet the requirements of paragraph (1) of subdivision (b) or paragraph (2) of subdivision (c), in the amount of the obligation and transfer the funds withheld to the State Department of Mental Health for deposit in the State Hospital Account or the Institutions for Mental Disease Account in the Mental Health Facilities Fund, as appropriate.

(Added by Stats.1991, c. 89 (A.B.1288), § 201.5, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 90, eff. Oct. 7, 1991; Stats.1992, c. 4 (A.B.1902), § 5; Stats.1992, c. 1374 (A.B.14), § 51, eff. Oct. 28, 1992; Stats.1995, c. 957 (A.B.320), § 1.)

§ 17601.05. Mental Health Facilities Fund; accounts

(a) There is hereby created the Mental Health Facilities Fund, which shall have the following accounts:

(1) The State Hospital Account.

(2) The Institutions for Mental Disease Account.

(b) Funds deposited in the State Hospital Account are continuously appropriated, notwithstanding Section 13340 of the Government Code, without regard to fiscal years, for disbursement monthly to the State Department of Mental Health for costs incurred pursuant to Chapter 4 (commencing with Section 4330) of Part 2 of Division 4.

(c) Funds deposited in the Institutions for Mental Disease Account of the Mental Health Facilities Fund are continuously appropriated, notwithstanding Section 13340 of the Government Code, without regard to fiscal years, for disbursement monthly to the State Department of Mental Health for costs incurred pursuant to Part 5 (commencing with Section 5900) of Division 4.

(Formerly § 17602.05, added by Stats.1991, c. 89 (A.B.1288), § 201.5, eff. June 30, 1991. Renumbered § 17601.05 and amended by Stats.1991, c. 611 (A.B.1491), § 93, eff. Oct. 7, 1991.)

§ 17601.10. Reimbursement delays; loans from general fund

(a) The State Department of Mental Health may request a loan from the General Fund in an amount that shall not exceed one hundred million dollars ($100,000,000) for the purposes of meeting cash–flow needs in its state hospital operations due to delays in the receipt of reimbursements from counties.

(b) The Controller shall liquidate any loan, in accordance with Section 16314 of the Government Code, from the next available deposits into the State Hospital Account in the Mental Health Facilities Fund.

(c) If a loan remains outstanding at the end of any fiscal year, the State Department of Mental Health shall determine the amount of the loan attributable to a shortfall in payments by counties against the amount due in Schedule B in the 1991–92 fiscal year or the contract amount for beds purchased in each subsequent fiscal year. The State Department of Mental Health shall determine any amounts due to counties pursuant to subdivision (d) of Section 4330. The State Department of Mental Health shall invoice each county for any outstanding balance. Sixty days after an invoice has been provided and upon notice to the Controller by the State Department of Mental Health, the Controller shall collect an amount from the county's allocation to the mental health account of the local health and welfare trust fund that is sufficient to pay any outstanding balance of the invoice. If these amounts do not provide sufficient funds to repay the outstanding loan, the Controller shall liquidate the balance from the next available deposits into the Mental Health Subaccount in the Sales Tax Account in the Local Revenue Fund.

(Added by Stats.1992, c. 1374 (A.B.14), § 54, eff. Oct. 28, 1992.)

Article 5 VEHICLE LICENSE FEE ALLOCATIONS

Operative Effect

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see § 209 of that act, as amended by Stats.1993, c. 728 (A.B.1728), § 6.

Application

Application of Part 5 during an economic emergency, see Welfare and Institutions Code §§ 18451, 18452.

§ 17604. Deposit of revenues into vehicle license fee account; schedule of allocations

(a) All motor vehicle license fee revenues collected in the 1991–92 fiscal year that are deposited to the credit of the Local Revenue Fund shall be credited to the Vehicle License Fee Account of that fund.

(b)(1) For the 1992–93 fiscal year and fiscal years thereafter, from vehicle license fee proceeds from revenues deposited to the credit of the Local Revenue Fund, the Controller shall make monthly deposits to the Vehicle License Fee Account of the Local Revenue Fund until the deposits equal the amounts that were allocated to counties, cities, and cities and counties as general purpose revenues in the prior fiscal year pursuant to this chapter from the Vehicle License Fee Account in the Local Revenue Fund and the Vehicle License Fee Account and the Vehicle License Fee Growth Account in the Local Revenue Fund.

(2) Any excess vehicle fee revenues deposited into the Local Revenue Fund pursuant to Section 11001.5 of the Revenue and Taxation Code shall be deposited in the Vehicle License Fee Growth Account of the Local Revenue Fund.

(c)(1) On or before the 27th day of each month, the Controller shall allocate to each county, city, or city and county, as general purpose revenues the amounts deposited and remaining unexpended and unreserved on the 15th day of the month in the Vehicle License Fee Account of the Local Revenue Fund, in accordance with paragraphs (2) and (3).

(2) For the 1991–92 fiscal year, allocations shall be made in accordance with the following schedule:

Jurisdiction	Allocation Percentage
Alameda	4.5046
Alpine	0.0137
Amador	0.1512
Butte	0.8131
Calaveras	0.1367
Colusa	0.1195
Contra Costa	2.2386
Del Norte	0.1340
El Dorado	0.5228
Fresno	2.3531
Glenn	0.1391
Humboldt	0.8929
Imperial	0.8237
Inyo	0.1869
Kern	1.6362
Kings	0.4084
Lake	0.1752
Lassen	0.1525
Los Angeles	37.2606
Madera	0.3656
Marin	1.0785
Mariposa	0.0815
Mendocino	0.2586
Merced	0.4094
Modoc	0.0923
Mono	0.1342
Monterey	0.8975
Napa	0.4466
Nevada	0.2734
Orange	5.4304
Placer	0.2806
Plumas	0.1145
Riverside	2.7867
Sacramento	2.7497
San Benito	0.1701
San Bernardino	2.4709
San Diego	4.7771
San Francisco	7.1450
San Joaquin	1.0810
San Luis Obispo	0.4811
San Mateo	1.5937
Santa Barbara	0.9418
Santa Clara	3.6238
Santa Cruz	0.6714
Shasta	0.6732
Sierra	0.0340
Siskiyou	0.2246
Solano	0.9377
Sonoma	1.6687
Stanislaus	1.0509
Sutter	0.4460
Tehama	0.2986
Trinity	0.1388
Tulare	0.7485
Tuolumne	0.2357

Jurisdiction	Allocation Percentage
Ventura	1.3658
Yolo	0.3522
Yuba	0.3076
Berkeley	0.0692
Long Beach	0.2918
Pasadena	0.1385

(3) For the 1992–93, 1993–94, and 1994–95 fiscal year and fiscal years thereafter, allocations shall be made in the same amounts as were distributed from the Vehicle License Fee Account and the Vehicle License Fee Growth Account in the prior fiscal year.

(4) For the 1995–96 fiscal year, allocations shall be made in the same amounts as distributed in the 1994–95 fiscal year from the Vehicle License Fee Account and the Vehicle License Fee Growth Account after adjusting the allocation amounts by the amounts specified for the following counties:

Alpine	$(11,296)
Amador	25,417
Calaveras	49,892
Del Norte	39,537
Glenn	(12,238)
Lassen	17,886
Mariposa	(6,950)
Modoc	(29,182)
Mono	(6,950)
San Benito	20,710
Sierra	(39,537)
Trinity	(48,009)

(5) For the 1996–97 fiscal year and fiscal years thereafter, allocations shall be made in the same amounts as were distributed from the Vehicle License Fee Account and the Vehicle License Fee Growth Account in the prior fiscal year.

Initial proceeds deposited in the Vehicle License Fee Account in the 2003–04 fiscal year in the amount that would otherwise have been transferred pursuant to Section 10754 of the Revenue and Taxation Code for the period June 20, 2003, to July 15, 2003, inclusive, shall be deemed to have been deposited during the period June 16, 2003, to July 15, 2003, inclusive, and allocated to cities, counties, and a city and county during the 2002–03 fiscal year.

(d) The Controller shall make monthly allocations from the amount deposited in the Vehicle License Collection Account of the Local Revenue Fund to each county in accordance with a schedule to be developed by the State Department of Mental Health in consultation with the California Mental Health Directors Association, which is compatible with the intent of the Legislature expressed in the act adding this subdivision.

(Added by Stats.1991, c. 89 (A.B.1288), § 201.5, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 96, eff. Oct. 7, 1991; Stats.1992, c. 720 (A.B.2476), § 3, eff. Sept. 15, 1992; Stats.1993, c. 100 (S.B.463), § 12, eff. July 13, 1993; Stats.1995, c. 547 (S.B.127), § 7; Stats.1997, c. 669 (S.B.921), § 6; Stats.2003, c. 757 (A.B.296), § 12.)

§ 17604.05. Deposits into specified accounts on county's request

(a) With the exception of the deposits made into the Vehicle License Collection Account, upon request of a county, the Controller may deposit all or any portion of the county's allocation under this article into the County Medical Services Program Account of the County Health Services Fund.

(b) Deposits made pursuant to subdivision (a) shall be deemed to be deposits into a county's or city's local health and welfare trust fund pursuant to Section 17608.10.

(Added by Stats.1991, c. 611 (A.B.1491), § 97, eff. Oct. 7, 1991. Amended by Stats.1997, c. 484 (S.B.651), § 2.5, eff. Sept. 25, 1997.)

Article 6 GROWTH ACCOUNT ALLOCATIONS DEPOSITS

Operative Effect

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see § 209 of that act, as amended by Stats.1993, c. 728 (A.B.1728), § 6.

Application

Application of Part 5 during an economic emergency, see Welfare and Institutions Code §§ 18451, 18452.

§ 17605. Caseload subaccount; allocations; determination of caseload

(a) For the 1992–93 fiscal year, the Controller shall deposit into the Caseload Subaccount of the Sales Tax Growth Account of the Local Revenue Fund, from revenues deposited into the Sales Tax Growth Account, an amount to be determined by the Department of Finance, that represents the sum of the shortfalls between the actual realignment revenues received by each county and each city and county from the Social Services Subaccount of the Local Revenue Fund in the 1991–92 fiscal year and the net costs incurred by each of those counties and cities and counties in the fiscal year for the programs described in Sections 10101, 10101.1, 11322, 11322.2, and 12306, subdivisions (a), (b), (c), and (d) of Section 15200, and Sections 15204.2 and 18906.5. The Department of Finance shall provide the Controller with an allocation schedule on or before August 15, 1993, that shall be used by the Controller to allocate funds deposited to the Caseload Subaccount under this subdivision. The Controller shall allocate these funds no later than August 27, 1993.

(b)(1)(A) For the 1993–94 fiscal year and fiscal years thereafter, the Controller shall deposit into the Caseload Subaccount of the Sales Tax Growth Account of the Local Revenue Fund, from revenues deposited into the Sales Tax Growth Account, an amount determined by the Department of Finance, in consultation with the appropriate state departments and the California State Association of Counties, that is sufficient to fund the net cost for the realigned portion of the county or city and county share of growth in social services caseloads, as specified in paragraph (2), and any share of growth from the previous year or years for which sufficient revenues were not available in the Caseload Subaccount. The Department of Finance shall provide the Controller with an allocations schedule on or before March 15 of each year. The schedule shall be used by the Controller to allocate funds deposited into the Caseload Subaccount under this subdivision.

(B) It is the intent of the Legislature that counties shall receive allocations from the Caseload Subaccount as soon as possible after funds are received in the Sales Tax Growth Account. The Department of Finance shall recommend to the Legislature, by January 10, 2005, a procedure to expedite the preparation and provision of the allocations schedule described in subparagraph (A) and the allocation of funds by the Controller.

(2) For purposes of this subdivision, "growth" means the increase in the actual caseload expenditures for the prior fiscal year over the actual caseload expenditures for the fiscal year preceding the prior fiscal year for the programs described in Section 12306, subdivisions (a), (b), (c), and (d) of Section 15200, and Sections 10101, 15204.2 and 18906.5 of this code, and for which funds are allocated pursuant to subdivision (b) of Section 123940 of the Health and Safety Code.

(3) The difference in caseload expenditures between the fiscal years shall be multiplied by the factors that represent the change in county or city and county shares of the realigned programs. These products shall then be added or subtracted, taking into account whether the county's or city and county's share of costs was increased or decreased as a result of realignment, to yield each county's or city and county's allocation for caseload growth. Allocations for counties or cities and counties with allocations of less than zero shall be set at zero.

(c) On or before the 27th day of each month, the Controller shall allocate, to the local health and welfare trust fund social services

account, the amounts deposited and remaining unexpended and unreserved on the 15th day of the month in the Caseload Subaccount, pursuant to the schedules of allocations of caseload growth described in subdivision (b). If there are insufficient funds to fully satisfy all caseload growth obligations, each county's or city and county's allocation for each program specified in subdivision (d) shall be prorated.

(d) Prior to allocating funds pursuant to subdivision (b), to the extent that funds are available from funds deposited in the Caseload Subaccount in the Sales Tax Growth Account in the Local Revenue Fund, the Controller shall allocate moneys to counties or cities and counties to correct any inequity or inequities in the computation of the child welfare services portion of the schedule required by subdivision (a) of Section 17602.

(e)(1) For the 2003–04 fiscal year, no Sales Tax Growth Account funds shall be allocated pursuant to this chapter until the caseload portion of the base of each county's social services account in the county's health and welfare trust fund is funded to the level of the 2001–02 fiscal year. Funds to meet this requirement shall be allocated from the Sales Tax Account of the Local Revenue Fund. If sufficient funds are not available in the Sales Tax Account of the Local Revenue Fund to achieve that funding level in the 2003–04 fiscal year, this requirement shall be funded in each succeeding fiscal year in which there are sufficient funds in the Sales Tax Account of the Local Revenue Fund until the caseload base funding level for which each county would have otherwise been eligible in accordance with subdivision (e) of Section 17602 for that year.

(2) The caseload portion of each county's social services account base shall be determined by subtracting its noncaseload portion of the base, as determined by the Department of Finance in its annual calculation of General Growth Account allocations, from the total base of each county's social services account for the 2001–02 fiscal year.

(Added by Stats.1993, c. 100 (S.B.463), § 14, eff. July 13, 1993. Amended by Stats.1996, c. 1023 (S.B.1497), § 500, eff. Sept. 29, 1996; Stats.1997, c. 484 (S.B.651), § 3, eff. Sept. 25, 1997; Stats.2003, c. 450 (A.B.1716), § 1; Stats.2004, c. 315 (A.B.2747), § 1.)

§ 17605.05. Base restoration subaccount; allocation of unexpended and unreserved funds

(a) For the 1992–93 fiscal year and fiscal years thereafter, after satisfying the obligations set forth in Section 17605, the Controller shall deposit into the Base Restoration Subaccount of the Sales Tax Growth Account of the Local Revenue Fund, the remainder of those revenues deposited in the Sales Tax Growth Account of the Local Revenue Fund, up to a cumulative amount, that, in conjunction with local matching funds pursuant to Section 17608.15, is sufficient to fund the difference between two billion two hundred nineteen million four hundred ten thousand two hundred sixty dollars ($2,219,410,260), less the amount allocated pursuant to subdivision (a) of Section 17605, and actual amounts distributed for the 1991–92 fiscal year pursuant to this chapter.

(b) On or before the 27th day of each month, the Controller shall allocate to the appropriate accounts in the local health and welfare trust fund the amounts deposited and remaining unexpended and unreserved on the 15th day of the month in the Base Restoration Subaccount of the Sales Tax Growth Account pursuant to a schedule developed by the Department of Finance, in consultation with the appropriate state departments and the California State Association of Counties, based on each county's, city's, and city and county's share of the funds determined pursuant to subdivision (a), including the adjustment made for individual counties and cities and counties that received funds allocated pursuant to subdivision (a) of Section 17605.

(c) For the 1994–95 fiscal year and fiscal years thereafter, in addition to the amount of mental health funding provided pursuant to Chapter 89 of the Statutes of 1991, five million dollars ($5,000,000) shall be provided for restoration of mental health base funding included in subdivision (a) of Section 2 of Chapter 1323 of the Statutes of 1990.

(Added by Stats.1993, c. 100 (S.B.463), § 16, eff. July 13, 1993. Amended by Stats.1994, c. 1096 (S.B.1795), § 6, eff. Sept. 29, 1994; Stats.1995, c. 957 (A.B.320), § 2.)

§ 17605.07. County medical services subaccounts

(a) For the 1992–93 fiscal year and fiscal years thereafter, after satisfying the obligations set forth in Sections 17605 and 17605.05, the Controller shall deposit into the County Medical Services Subaccount 4.027 percent of the amounts remaining and unexpended in the Sales Tax Growth Account of the Local Revenue Fund.

(b) If the amount deposited to the Caseload Subaccount of the Sales Tax Growth Account pursuant to subdivision (b) of Section 17605 exceeds twenty million dollars ($20,000,000) for any fiscal year, then an additional amount equal to 4.027 percent of the amount deposited to the Caseload Subaccount shall be deposited to the County Medical Services Program Subaccount of the Sales Tax Growth Account.

(Added by Stats.1993, c. 100 (S.B.463), § 17, eff. July 13, 1993.)

Operative Effect

For conditions rendering the provisions of Stats.1993, c. 100 inoperative, see Stats.1993, c. 100 (S.B.463), § 28, eff. July 13, 1993.

§ 17605.08. Special equity subaccount

(a) For the fiscal year following the first fiscal year in which funds are deposited into the Special Equity Subaccount, after satisfying the obligations set forth in Sections 17605 and 17605.05, the Controller shall deposit into the Special Equity Subaccount any positive difference between ten million one hundred thousand dollars ($10,100,000) and the sum of (1) the amount allocated in the prior year to the Special Equity Subaccount pursuant to Section 17606.10 and (2) the amount of matching funds allocated in the prior fiscal year pursuant to Section 17606.20.

(b) For each fiscal year following the first fiscal year described in subdivision (a), after satisfying the obligations set forth in Section 17605 and 17605.05, the Controller shall deposit any positive difference between seven million one hundred thousand dollars ($7,100,000) and the sum of the amounts allocated in the prior fiscal year to the Special Equity Subaccount pursuant to Section 17605.10 and the matching funds allocated in the prior fiscal year pursuant to Section 17606.20.

(Added by Stats.1993, c. 100 (S.B.463), § 18, eff. July 13, 1993.)

Operative Effect

For conditions rendering the provisions of Stats.1993, c. 100 inoperative, see Stats.1993, c. 100 (S.B.463), § 28, eff. July 13, 1993.

§ 17605.10. Deposit of remaining funds in specified subaccount; schedule

(a) For the 1992–93 fiscal year and fiscal years thereafter, after satisfying the obligations set forth in Sections 17605, 17605.05, 17605.07, and 17605.08, the Controller shall deposit any funds remaining in the Sales Tax Growth Account of the Local Revenue Fund into the specified subaccounts according to the following schedule:

Account	Allocation Percentage
The Indigent Health Equity Subaccount	4.9388
The Community Health Equity Subaccount	12.0937
The Mental Health Equity Subaccount	3.9081
The State Hospital Mental Health Equity Subaccount	6.9377
The General Growth Subaccount	64.0367
The Special Equity Subaccount	8.0850

(b) Notwithstanding subdivision (a), after amounts have been deposited into the Indigent Health Equity Subaccount, the Community Health Equity Subaccount, the Mental Health Equity Subaccount, and the State Hospital Mental Health Equity Subaccount, which in conjunction with matching funds pursuant to Section

17606.20, comprise a cumulative total of two hundred seven million nine hundred thousand dollars ($207,900,000), or after the requirements of paragraph (2) of subdivision (c) of Section 17606.05 have been satisfied, whichever is less, all additional funds that would be available for deposit into those subaccounts shall be deposited into any remaining subaccounts in proportion to their percentages in the schedule specified in subdivision (a).

(c) Notwithstanding subdivision (a), after amounts have been deposited into the Special Equity Subaccount, which in conjunction with matching funds pursuant to Section 17606.20, comprise a cumulative total of thirty–eight million five hundred thousand dollars ($38,500,000), all additional funds that would be available for deposit into that subaccount shall be deposited into the remaining subaccounts in proportion to their percentages specified in subdivision (a).

(d) Notwithstanding subdivision (a), cities shall not participate in the allocations from the State Hospital Mental Health Equity Subaccount and the Indigent Health Equity Subaccount. For purposes of calculating equity allocations among the counties and a city and county, the allocations of the Mental Health Equity Subaccount and the State Hospital Mental Health Equity Subaccount shall be combined by consolidating the resource bases associated with each subaccount as the basis of calculating the poverty–population shortfall. The population portion of the calculation of allocations of the Mental Health Equity Subaccount and the State Hospital Mental Health Equity Subaccount shall be adjusted to ensure that cities receive an appropriate share of equity funds consistent with their operation of community programs, and the counties in which those cities are located receive an appropriate share reflecting the fact that counties provide the state hospital services in those counties.

(Added by Stats.1993, c. 100 (S.B.463), § 19, eff. July 13, 1993. Amended by Stats.1997, c. 484 (S.B.651), § 4, eff. Sept. 25, 1997.)

Article 7 ALLOCATION OF FUNDS FROM THE SALES TAX GROWTH ACCOUNT

Operative Effect

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see § 209 of that act, as amended by Stats.1993, c. 728 (A.B.1728), § 6.

Application

Application of Part 5 during an economic emergency, see Welfare and Institutions Code §§ 18451, 18452.

§ 17606.05. Counties with poverty–population shortfall; schedule of allocations from specific subaccounts; calculations

(a) For the 1992–93 fiscal year, the Controller shall allocate to those counties that have a poverty–population shortfall, as described in subdivision (c), those funds deposited in the Indigent Health Equity Subaccount, the Community Health Equity Subaccount, the Mental Health Equity Subaccount, and the State Hospital Mental Health Equity Subaccount in accordance with the following tables and schedules:

(1) The Controller shall make monthly allocations from the amounts deposited in the Indigent Health Equity Subaccount to the health account in the local health and welfare trust fund in accordance with the following schedule:

County	Allocation Percentage
Alameda	9.377
Contra Costa	4.939
Fresno	6.964
Kern	4.362
Merced	1.889
Monterey	2.143
Placer	.959
Riverside	7.059
Sacramento	8.907
San Bernardino	10.804
San Diego	15.927
San Joaquin	4.855
San Luis Obispo	1.200
San Mateo	3.159
Santa Barbara	3.159
Santa Clara	3.159
Stanislaus	3.249
Tulare	3.262
Ventura	3.592
Yolo	1.038

(2) The Controller shall make monthly allocations from the amounts deposited in the Community Health Equity Subaccount to the health account in the local health and welfare trust fund in accordance with the following schedule:

County	Allocation Percentage
Butte	1.11
Calaveras	.13
Del Norte	.18
El Dorado	.54
Fresno	7.20
Glenn	.12
Humboldt	.71
Imperial	.72
Kern	4.81
Kings	.62
Lake	.35
Lassen	.15
Madera	.43
Marin	.84
Mariposa	.07
Mendocino	.54
Merced	1.53
Modoc	.05
Napa	.50
Nevada	.40
Placer	.63
Plumas	.12
Riverside	7.66
Sacramento	8.01
San Benito	.15
San Bernardino	11.76
San Diego	17.07
San Joaquin	3.91
San Luis Obispo	1.09
Santa Clara	13.88
Shasta	1.09
Sierra	.02
Siskiyou	.25
Solano	1.25
Sonoma	1.83
Stanislaus	2.90
Sutter	.67
Tehama	.29
Tulare	2.03
Tuolumne	.22
Ventura	3.34
Yolo	.84
City of Berkeley	—
City of Pasadena	—
City of Long Beach	—

(3) The Controller shall make monthly allocations from the amounts deposited in the State Hospital Mental Health Equity Subaccount to the mental health account in the local health and welfare trust fund in accordance with the following schedule:

County	Allocation Percentage
Amador	.055
Butte	1.957
Calaveras	.256

County	Allocation Percentage
Del Norte	.291
El Dorado	1.011
Fresno	10.815
Glenn	.277
Humboldt	.747
Imperial	1.682
Kern	1.726
Kings	1.153
Lake	.470
Lassen	.150
Madera	1.192
Mariposa	.006
Mendocino	.478
Merced	2.924
Modoc	.007
Monterey	.684
Nevada	.021
Placer	.450
Plumas	.068
Riverside	5.538
Sacramento	9.423
San Benito	010
San Bernardino	11.445
San Diego	19.331
San Joaquin	7.682
San Luis Obispo	1.119
Santa Barbara	.341
Santa Clara	5.264
Santa Cruz	.271
Shasta	.708
Siskiyou	.529
Stanislaus	3.309
Sutter	1.702
Tehama	.194
Trinity	.054
Tulare	5.074
Tuolumne	.104
Ventura	1.377

(4) The Controller shall make monthly allocations from the amounts deposited in the Mental Health Equity Subaccount to the mental health account in the local health and welfare trust fund in accordance with the following schedule:

County	Allocation Percentage
Butte	.379
Contra Costa	6.066
Fresno	7.113
Imperial	.711
Kern	5.387
Lake	.490
Lassen	.045
Los Angeles	28.142
Madera	.335
Merced	1.955
Napa	.046
Orange	2.794
Riverside	6.448
Sacramento	3.710
San Benito	.231
San Bernardino	19.414
Santa Cruz	2.171
Shasta	1.909
Solano	5.117
Stanislaus	3.717
Tulare	3.604
Tuolumne	.217
City of Berkeley	—

(b)(1) For the 1993–94 fiscal year and succeeding fiscal years, the Controller shall allocate, on a monthly basis, to the appropriate accounts of the local health and welfare trust fund those funds deposited into the Indigent Health Equity Subaccount, the Community Health Equity Subaccount, the Mental Health Equity Subaccount, and the State Hospital Mental Health Equity Subaccount in the Sales Tax Growth Account in accordance with a schedule prepared in accordance with subdivision (c) by the Department of Finance.

(2) The Department of Finance shall annually consult with the California State Association of Counties prior to submitting any schedule of allocations to the Controller.

(3) If deposits into the Indigent Health Equity Subaccount, the Community Health Equity Subaccount, the Mental Health Equity Subaccount, and the State Hospital Mental Health Equity Subaccount are not sufficient to eliminate poverty–population shortfalls as described in subdivision (c), each eligible jurisdiction shall receive an allocation which equals its pro rata share of funds in the subaccount based on the jurisdiction's percentage share of the poverty–population shortfall.

(c)(1) A poverty–population percentage shall be computed annually by the Department of Finance for each county, city, and city and county by averaging each jurisdiction's share of the state's total population and each jurisdiction's percentage share of the state's total cash–grant certified CalWORKs and SSI/SSP eligible populations residing in the county, city, or city and county, as determined by the Department of Finance. For purposes of calculating the poverty–population percentage for the State Hospital Mental Health Equity Subaccount and the Indigent Health Equity Subaccount, beginning with the 1995–96 allocation, the population and poverty figures for the cities shall be assigned to the county in which each city is located.

(2)(A) For each subaccount, the Department of Finance shall calculate the poverty–population shortfall for each county, city, and city or county, which received funding from the state, including any equity allocation made pursuant to this section, in the prior fiscal year and excluding any transfers to or from other subaccounts under Section 17600.20.

(B) The poverty–population shortfalls shall be calculated for the following programs or funding sources:

(i) State funding under Part 4.5 (commencing with Section 16700), as operative on June 29, 1991, for indigent health programs.

(ii) State funding under Part 4.5 (commencing with Section 16700), as operative on June 29, 1991, for community health programs.

(iii) Funding provided for purposes of the implementation of Division 5 (commencing with Section 5000) for the organization and financing of community mental health programs, including funding for the purchase of state hospital services, funding for services provided by institutes for mental diseases, and funding for services provided for under Chapter 1294 of the Statutes of 1989.

(C) The calculation shall identify the amount by which the allocations for the programs or funding sources identified in subparagraph (B) are less than the amount the jurisdiction would have received if its percentage share of the prior year funding had been equal to its poverty–population percentage.

(D) The calculation of the poverty–population shortfall for clause (iii) of subparagraph (B) shall include all allocations received pursuant to Section 5701, including all distributions made pursuant to subdivision (b) of Section 5701, unless those funds are intended for pilot program or demonstration projects or are exempted from this requirement by other provisions of law. Poverty–population shortfall calculations shall not include funds received through the state mandates claim process.

(E)(i) The Department of Finance shall recalculate the resource base used in determining the poverty–population shortfalls pursuant to subparagraph (B) for the 1994–95 fiscal year equity allocations according to this subparagraph. The resource base for each equity subaccount shall be reconstructed beginning with the resource bases to be used for allocating 1994–95 fiscal year growth.

(ii) For the State Hospital Mental Health Equity Subaccount, the Department of Finance shall use the 1990–91 fiscal year State

Hospital Mental Health allocations as reported by the State Department of Mental Health.

(iii) For the Community Mental Health Equity Subaccount:

(I) The Department of Finance shall use the following resources reported by the State Department of Mental Health:

(ia) The final December 1992 distribution of resources associated with Institutes of Mental Disease.

(ib) The 1990–91 fiscal year community mental health allocations.

(ic) Allocations for services provided for under Chapter 1294 of the Statutes of 1989.

(II) The Department of Finance shall expand the resource base with the following nonrealigned funding sources, as allocated among counties:

(ia) 1991–92 fiscal year Cigarette and Tobacco Products Surtax allocations made under Chapter 1331 of the Statutes of 1989, Chapter 51 of the Statutes of 1990, and, for the 1994–95 fiscal year only, Chapter 1323 of the Statutes of 1990.

(ib) 1993–94 fiscal year federal homeless block grant allocations.

(ic) 1993–94 fiscal year mental health special education allocations.

(id) 1993–94 fiscal year allocations for the system of care for children, in accordance with Chapter 1229 of the Statutes of 1992.

(ie) 1993–94 fiscal year federal Substance Abuse and Mental Health Services Administration block grant funds.

(iv) For the Community Health Equity Subaccount and the Indigent Health Equity Subaccount, the Department of Finance shall use the historical resource base as allocated among the counties, cities, and city and county, as reported by the State Department of Health Services in the September 17, 1991, report of Indigent and Community Health Resources.

(v) The Department of Finance shall use these adjusted resource bases for the four equity subaccounts as provided in this subparagraph to calculate what the four 1994–95 fiscal year equity subaccount allocations would have been, and, together with 1994–95 fiscal year Base Restoration Subaccount allocations as adjusted according to subdivision (b) of Section 17605, to the Health and Mental Health Accounts, reconstruct the 1994–95 fiscal year realignment base for the 1995–96 allocation year for each city, county, and city and county for each equity subaccount. The Department of Finance shall use these adjusted resource bases to do both of the following:

(I) Distribute equity allocations for the 1995–96 fiscal year.

(II) With adjustments for growth in realigned funds, and annual changes that reflect funds allocated in the previous year from nonrealigned funds specified in this subdivision, calculate equity allocations in the 1996–97 fiscal year and fiscal years thereafter.

(3) For each subaccount, the Department of Finance shall total the amounts calculated in paragraph (2) and determine the percentage of that total represented by each amount.

(4) Each county's, city's, or city and county's percentage share of each subaccount specified in subdivision (b) of Section 17606.05 shall equal the percentage computed in paragraph (3).

(5) All calculations made pursuant to this subdivision shall be compiled and made available by the Department of Finance, upon request, to all counties, cities, and cities and counties eligible for funding pursuant to this subdivision, and cities and counties, receiving funding pursuant to this article at least 30 days prior to submission of schedules of allocations to the Controller.

(Added by Stats.1991, c. 89 (A.B.1288), § 201.5, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 101, eff. Oct. 7, 1991; Stats.1993, c. 100 (S.B.463), § 22, eff. July 13, 1993; Stats.1997, c. 484 (S.B.651), § 5, eff. Sept. 25, 1997; Stats.1998, c. 642 (S.B.1648), § 2.)

§ 17606.10. Schedule of allocations; general growth subaccount

(a) For the 1992–93 fiscal year and subsequent fiscal years, the Controller shall allocate funds, on a monthly basis from the General Growth Subaccount in the Sales Tax Growth Account to the appropriate accounts in the local health and welfare trust fund of each county, city, and city and county in accordance with a schedule setting forth the percentage of total state resources received in the 1990–91 fiscal year, including State Legalization Impact Assistance Grants distributed by the state under Part 4.5 (commencing with Section 16700), funding provided for purposes of implementation of Division 5 (commencing with Section 5000), for the organization and financing of community mental health services, including the Cigarette and Tobacco Products Surtax proceeds which are allocated to county mental health programs pursuant to Chapter 1331 of the Statutes of 1989, Chapter 51 of the Statutes of 1990, and Chapter 1323 of the Statutes of 1990, and state hospital funding and funding distributed for programs administered under Sections 1794, 10101.1, and 11322.2, as annually adjusted by the Department of Finance, in conjunction with the appropriate state department to reflect changes in equity status from the base percentages. However, for the 1992–93 fiscal year, the allocation for community mental health services shall be based on the following schedule:

Jurisdiction	Percentage of Statewide Resource Base
Alameda	4.3693
Alpine	0.0128
Amador	0.0941
Butte	0.7797
Calaveras	0.1157
Colusa	0.0847
Contra Costa	2.3115
Del Norte	0.1237
El Dorado	0.3966
Fresno	3.1419
Glenn	0.1304
Humboldt	0.6175
Imperial	0.5425
Inyo	0.1217
Kern	1.8574
Kings	0.4229
Lake	0.2362
Lassen	0.1183
Los Angeles	27.9666
Madera	0.3552
Marin	0.9180
Mariposa	0.0792
Mendocino	0.4099
Merced	0.8831
Modoc	0.0561
Mono	0.0511
Monterey	1.1663
Napa	0.3856
Nevada	0.2129
Orange	5.3423
Placer	0.5034
Plumas	0.1134
Riverside	3.6179
Sacramento	4.1872
San Benito	0.1010
San Bernardino	4.5494
San Diego	7.8773
San Francisco	3.5335
San Joaquin	2.4690
San Luis Obispo	0.6652
San Mateo	2.5169
Santa Barbara	1.0745
Santa Clara	5.0488
Santa Cruz	0.7960
Shasta	0.5493
Sierra	0.0345
Siskiyou	0.2051
Solano	0.6694
Sonoma	1.1486
Stanislaus	1.4701
Sutter/Yuba	0.6294
Tehama	0.2384

Jurisdiction	Percentage of Statewide Resource Base
Trinity	0.0826
Tulare	1.4704
Tuolumne	0.1666
Ventura	1.9311
Yolo	0.5443
Berkeley	0.2688
Tri–City	0.2347

(b) The Department of Finance shall recalculate the resource base used in determining the General Growth Subaccount allocations to the Health Account, Mental Health Account, and Social Services Account of the local health and welfare trust fund of each city, county, and city and county for the 1994–95 fiscal year general growth allocations according to subdivisions (c) and (d). For the 1995–96 fiscal year and annually thereafter, the Department of Finance shall prepare the schedule of allocations of growth based upon the recalculation of the resource base as provided by subdivision (c).

(c) For the Mental Health Account, the Department of Finance shall do all of the following:

(1) Use the following sources as reported by the State Department of Mental Health:

(A) The final December 1992 distribution of resources associated with Institutes for Mental Disease.

(B) The 1990–91 fiscal year state hospitals and community mental health allocations.

(C) Allocations for services provided for under Chapter 1294 of the Statutes of 1989.

(2) Expand the resource base with the following nonrealigned funding sources as allocated among the counties:

(A) Tobacco surtax allocations made under Chapter 1331 of the Statutes of 1989 and Chapter 51 of the Statutes of 1990.

(B) For the 1994–95 allocation year only, Chapter 1323 of the Statutes of 1990.

(C) 1993–94 fiscal year federal homeless block grant allocation.

(D) 1993–94 fiscal year Mental Health Special Education allocations.

(E) 1993–94 fiscal year allocations for the system of care for children, in accordance with Chapter 1229 of the Statutes of 1992.

(F) 1993–94 fiscal year federal Substance Abuse and Mental Health Services Administration block grant allocations pursuant to Subchapter 1 (commencing with Section 10801) of Chapter 114 of Title 42 of the United States Code.

(d) For the Health Account, the Department of Finance shall use the historical resource base of state funds as allocated among the counties, cities, and city and county as reported by the State Department of Health Services in a September 17, 1991, report of Indigent and Community Health Resources.

(e) The Department of Finance shall use these adjusted resource bases for the Health Account and Mental Health Account to calculate what the 1994–95 fiscal year General Growth Subaccount allocations would have been, and together with 1994–95 fiscal year Base Restoration Subaccount allocations, CMSP subaccount allocations, equity allocations to the Health Account and Mental Health Account as adjusted by subparagraph (E) of paragraph (2) of subdivision (c) of Section 17606.05, and special equity allocations to the Health Account and Mental Health Account as adjusted by subdivision (e) of Section 17606.15 reconstruct the 1994–95 fiscal year General Growth Subaccount resource base for the 1995–96 allocation year for each county, city, and city and county. Notwithstanding any other provision of law, the actual 1994–95 general growth allocations shall not become part of the realignment base allocations to each county, city, and city and county. The total amounts distributed by the Controller for general growth for the 1994–95 allocation year shall be reallocated among the counties, cities, and city and county in the 1995–96 allocation year according to this paragraph, and shall be included in the general growth resource base for the 1996–97 allocation year and each fiscal year thereafter. For the 1996–97 allocation year and fiscal years thereafter, the Department of Finance shall update the base with actual growth allocations to the Health Account, Mental Health Account, and Social Services Account of each county, city, and city and county local health and welfare trust fund in the prior year, and adjust for actual changes in nonrealigned funds specified in subdivision (c) in the year prior to the allocation year.

(Added by Stats.1991, c. 89 (A.B.1288), § 201.5, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 102, eff. Oct. 7, 1991; Stats.1993, c. 100 (S.B.463), § 23, eff. July 13, 1993; Stats.1997, c. 484 (S.B.651), § 6, eff. Sept. 25, 1997.)

§ 17606.15. Local health and welfare trust fund accounts; allocation schedules for specified counties

(a) For the first fiscal year in which funds are deposited into the Special Equity Subaccount in the Sales Tax Growth Account in the Local Revenue Fund, the Controller shall allocate funds on a monthly basis from the Special Equity Subaccount to the account of the local health and welfare trust fund designated by each recipient county in accordance with the following schedule:

County	Allocation Percentage
Orange	49.505
San Diego	39.604
Santa Clara	10.891

(b) For the fiscal year following the first fiscal year in which funds are deposited into the Special Equity Subaccount, the Controller shall first allocate any amount deposited pursuant to Section 17605.08 in accordance with the schedule described in subdivision (a).

(c) For each fiscal year following the first fiscal year in which funds are deposited into the Special Equity Subaccount in the Sales Tax Growth Account in the Local Revenue Fund, after fulfilling the obligations set forth in subdivision (b), the Controller shall allocate all funds remaining in that subaccount to the account of the local health and welfare trust fund designated by each recipient county in accordance with the following schedule:

County	Allocation Percentage
Orange	28.169
San Diego	56.338
Santa Clara	15.493

(d) Notwithstanding any other subdivision of this section, the Controller shall not allocate from the Special Equity Subaccount of the Sales Tax Growth Account in the Local Revenue Fund any amount that, in conjunction with matching funds allocated pursuant to Section 17606.20, comprises a cumulative total of more than the amounts in the following schedule:

County	Allocation
Orange	$13,000,000
San Diego	20,000,000
Santa Clara	5,500,000

(e) For purposes of calculating the poverty–population shortfall as required by subdivision (c) of Section 17606.05, counties receiving funds pursuant to this section shall inform the Department of Finance of the amount from each county's special equity allocation that has been deposited into the health subaccount of the health and welfare trust fund that shall be credited to the indigent health resource base and the community resource base.

(Added by Stats.1993, c. 100 (S.B.463), § 25, eff. July 13, 1993. Amended by Stats.1997, c. 484 (S.B.651), § 7, eff. Sept. 25, 1997.)

§ 17606.20. Vehicle license fee growth account; allocations to local governments

(a) On or before the 27th day of each month, the Controller shall allocate money to each county, city, and city and county, as general purpose revenues, from revenues deposited in the Vehicle License Fee Growth Account in the Local Revenue Fund in amounts that are proportional to each county's, city's, or city and county's total

allocation from the Sales Tax Growth Account, except amounts provided pursuant to Section 17605.

(b) Notwithstanding subdivision (a), for the 1998–99 fiscal year and fiscal years thereafter, if, after meeting the requirements of Section 17605, there are no funds remaining in the Sales Tax Growth Account to allocate to each county, city, and city and county pursuant to subdivisions (a) and (b) of Section 17605.07, Section 17605.08, or Section 17605.10, the Controller shall allocate the revenues deposited in the Vehicle License Fee Growth Account to each county, city, and city and county, as general purpose revenues, in the following manner:

(1) The Controller shall determine the amount of sales tax growth in the 1996–97 fiscal year which exceeded the requirements of Section 17605 in the 1996–97 fiscal year.

(2) The Controller shall determine the amount of sales tax growth allocated in the 1996–97 fiscal year to the County Medical Services Subaccount pursuant to subdivisions (a) and (b) of Section 17605.7, and to the Indigent Health Equity, Community Health Equity, Mental Health Equity, State Hospital Mental Health Equity, General Growth, and Special Equity Subaccounts pursuant to Section 17605.10.

(3) The Controller shall compute percentages by dividing the amounts determined in paragraph (2) by the amount determined in paragraph (1).

(4) For calculation purposes related to paragraph (5), the Controller shall apply the percentages determined in paragraph (3) to revenues in the Vehicle License Fee Growth Account to determine the amount of vehicle license fee growth revenues attributable to the County Medical Services, Indigent Health Equity, Community Health Equity, Mental Health Equity, State Hospital Mental Health Equity, General Growth, and Special Equity Subaccounts. This paragraph shall not require the Controller to deposit vehicle license fee growth revenues into the subaccounts specified in this paragraph, and is solely for determining the distribution of vehicle license growth revenues to each county, city, and city and county.

(5) On or before the 27th day of each month, the Controller shall allocate money to each county, city, and city and county, as general purpose revenues, from revenues deposited in the Vehicle License Fee Growth Account in the Local Revenue Fund. These allocations shall be determined based on schedules developed by the Department of Finance pursuant to Sections 17606.05 and 17606.10, in consultation with the California State Association of Counties.

(Added by Stats.1991, c. 89 (A.B.1288), § 201.5, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 104, eff. Oct. 7, 1991; Stats.1993, c. 100 (S.B.463), § 26, eff. July 13, 1993; Stats.1998, c. 642 (S.B.1648), § 3.)

Article 9 COUNTY MATCHING FUND REQUIREMENTS

Operative Effect

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see § 209 of that act, as amended by Stats.1993, c. 728 (A.B.1728), § 6.

Application

Application of Part 5 during an economic emergency, see Welfare and Institutions Code §§ 18451, 18452.

§ 17608.05. County mental health account; schedule for matching fund deposits; reductions; elections not to apply funds for programs

(a) As a condition of deposit of funds from the Sales Tax Account of the Local Revenue Fund into a county's local health and welfare trust fund mental health account, the county or city shall deposit each month local matching funds in accordance with a schedule developed by the State Department of Mental Health based on county or city standard matching obligations for the 1990–91 fiscal year for mental health programs.

(b) A county, city, or city and county may limit its deposit of matching funds to the amount necessary to meet minimum federal maintenance of effort requirements, as calculated by the State Department of Mental Health, subject to the approval of the Department of Finance. However, the amount of the reduction permitted by the limitation provided for by this subdivision shall not exceed twenty–five million dollars ($25,000,000) per fiscal year on a statewide basis.

(c) Any county, city, or city and county that elects not to apply maintenance of effort funds for community mental health programs shall not use the loss of these expenditures from local mental health programs for realignment purposes, including any calculation for poverty–population shortfall for clause (iv) of subparagraph (B) of paragraph (2) of subdivision (c) of Section 17606.05.

(Added by Stats.1991, c. 89 (A.B.1288), § 201.5, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 105, eff. Oct. 7, 1991; Stats.1993, c. 64 (S.B.627), § 52, eff. June 30, 1993; Stats.1996, c. 6 (S.B.681), § 11.)

§ 17608.10. County account; schedule for matching fund deposits

(a) As a condition of deposit of funds from the Sales Tax Account of the Local Revenue Fund into a county's or city's local health and welfare trust fund account, a county or city shall deposit county or city general purpose revenues into the health account each month equal to one–twelfth of the amounts set forth in the following schedule:

Jurisdiction	Amount
Alameda	$ 20,545,579
Alpine	21,465
Amador	278,460
Butte	724,304
Calaveras	0
Colusa	237,754
Contra Costa	10,114,331
Del Norte	44,324
El Dorado	704,192
Fresno	10,404,113
Glenn	58,501
Humboldt	589,711
Imperial	772,088
Inyo	561,262
Kern	7,623,407
Kings	466,273
Lake	118,222
Lassen	119,938
Los Angeles	159,324,70
Madera	81,788
Marin	1,196,515
Mariposa	0
Mendocino	347,945
Merced	858,484
Modoc	70,462
Mono	409,928
Monterey	3,367,970
Napa	546,957
Nevada	96,375
Orange	15,727,317
Placer	368,490
Plumas	66,295
Riverside	7,365,244
Sacramento	7,128,508
San Benito	0
San Bernardino	4,316,679
San Diego	4,403,290
San Francisco	39,363,076
San Joaquin	2,469,934
San Luis Obispo	1,359,837
San Mateo	6,786,043
Santa Barbara	3,794,166
Santa Clara	13,203,375
Santa Cruz	2,053,729
Shasta	184,049
Sierra	7,330
Siskiyou	287,627
Solano	115,800

Jurisdiction	Amount
Sonoma	438,234
Stanislaus	3,510,803
Sutter	674,240
Tehama	446,992
Trinity	292,662
Tulare	1,547,481
Tuolumne	305,830
Ventura	4,185,070
Yolo	1,081,388
Yuba	187,701
Berkeley	1,953,018
Long Beach	0
Pasadena	0

(b) As an additional condition of deposit of funds from the Sales Tax Account of the Local Revenue Fund into a county's or city's local health and welfare trust fund, a county or city shall deposit each month an amount of county or city general purpose revenues at least equal to the amount of funds transferred by the Controller each month to the county or city pursuant to Article 5 (commencing with Section 17604).

(c) As an additional condition of deposit of funds from the Sales Tax Account of the Local Revenue Fund into a county's or city's local health and welfare trust fund account, a county or city shall deposit each month into the mental health account of the local health and welfare trust fund account an amount of county or city general purpose revenues at least equal to the amount of funds transferred pursuant to subdivision (d) of Section 17604 to the county.

(Added by Stats.1991, c. 89 (A.B.1288), § 201.5, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 106, eff. Oct. 7, 1991; Stats.1992, c. 719 (A.B.1012), § 16, eff. Sept. 15, 1992; Stats.1992, c. 720 (A.B.2476), § 4, eff. Sept. 15, 1992; Stats.1997, c. 484 (S.B.651), § 8, eff. Sept. 25, 1997.)

§ 17608.15. Growth account funds; matching fund requirements

As a condition of the deposit of Sales Tax Growth Account funds into the local health and welfare trust fund accounts, a county or city or city and county shall deposit, each month, local matching funds that are sufficient to permit the disbursement from the local health and welfare trust fund accounts amounts that are equivalent to the growth of revenue in the sales tax and vehicle license fees allocated pursuant to Section 11001.5 of the Revenue and Taxation Code to the trust fund accounts and the county general funds.

(Added by Stats.1991, c. 89 (A.B.1288), § 201.5, eff. June 30, 1991. Amended by Stats.1993, c. 100 (S.B.463), § 27, eff. July 13, 1993.)

Operative Effect

For conditions rendering the provisions of Stats.1993, c. 100 inoperative, see Stats.1993, c. 100 (S.B.463), § 28, eff. July 13, 1993.

Article 10 EXPENDITURE LIMITATIONS AND REPORTS

Operative Effect

For conditions rendering the provisions of Stats.1991, c. 89 inoperative, see § 209 of that act, as amended by Stats.1993, c. 728 (A.B.1728), § 6.

Application

Application of Part 5 during an economic emergency, see Welfare and Institutions Code §§ 18451, 18452.

§ 17609. Purposes of funds

Funds deposited into a county's health and welfare trust fund accounts may be expended only for the purposes of providing those mental health, public health, indigent health care, social services, and juvenile justice programs transferred or otherwise financed pursuant to the realignment established under Chapters 89 and 91 of the Statutes of 1991.

(Added by Stats.1991, c. 89 (A.B.1288), § 201.5, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 107, eff. Oct. 7, 1991.)

§ 17609.01. Exclusive purpose of funds

Except as provided in Section 17600.20, funds deposited in the health account may be expended only for public health and indigent health care services.

(Added by Stats.1991, c. 611 (A.B.1491), § 108, eff. Oct. 7, 1991.)

§ 17609.05. Periodic reports; verification

(a) Each county, city, or city and county shall file with the Controller quarterly and annual reports of trust fund deposits and disbursements within 60 days after the end of the quarter.

(b) The Controller shall verify deposits and notify appropriate state agencies upon request of deficits in deposits. The next scheduled allocations shall not be made until deposits are made accordingly. Reports shall be forwarded to the appropriate state department for expenditure verification.

(Added by Stats.1991, c. 89 (A.B.1288), § 201.5, eff. June 30, 1991. Amended by Stats.1991, c. 611 (A.B.1491), § 109, eff. Oct. 7, 1991; Stats.1993, c. 589 (A.B.2211), § 202; Stats.1993, c. 728 (A.B.1728), § 4, eff. Oct. 4, 1993.)

§ 17609.09. Remittance advice upon distributions

Whenever a distribution is made to counties, cities, and cities and counties, the Controller shall provide a remittance advice, identifying the amounts that are provided from each account or subaccount in the Local Revenue Fund and identifying the account in the local health and welfare trust fund into which the funds shall be deposited.

(Added by Stats.1993, c. 728 (A.B.1728), § 5, eff. Oct. 4, 1993.)

§ 17609.10. Administrative costs

The Controller shall charge actual administration costs for the implementation and maintenance of this part and subsequent related legislation to the Local Revenue Fund prior to all allocations. These charges shall be reviewed and approved annually by the Department of Finance.

(Added by Stats.1991, c. 611 (A.B.1491), § 110, eff. Oct. 7, 1991.)

Part 6 MISCELLANEOUS PROVISIONS

Chapter 6 SERIOUSLY EMOTIONALLY DISTURBED CHILDREN: 24–HOUR OUT–OF–HOME CARE

§ 18350. Payments for twenty–four–hour out–of–home care; limitations

(a) Payments for 24–hour out–of–home care shall be provided under this chapter on behalf of any seriously emotionally disturbed child who has been placed out–of–home pursuant to an individualized education program developed under Section 7572.5 of the Government Code. These payments shall not constitute an aid payment or aid program.

(b) Payments shall only be made to children placed in privately operated residential facilities licensed in accordance with the Community Care Facilities Act. [1]

(c) Payments for care and supervision shall be based on rates established in accordance with Sections 11460 to 11467, inclusive.

(d) Payments for 24–hour out–of–home care under this section shall not result in any cost to the seriously emotionally disturbed child or his or her parent or parents.

(Added by Stats.1985, c. 1274, § 15, eff. Sept. 30, 1985. Amended by Stats.1989, c. 1294, § 22; Stats.1990, c. 46 (S.B.1176), § 12, eff. April 10, 1990.)

[1] Health and Safety Code § 1500 et seq.

§ 18351. Issuance of warrants; authorization documents; reports

(a) Payments shall be issued by the county welfare department to residential care providers upon receipt of authorization documents from the State Department of Mental Health or a designated county mental health agency. The county welfare department located in the same county as the county mental health agency designated to provide

case management services shall be responsible for payment under this section. Authorization documents shall be submitted directly to the county welfare department clerical unit responsible for issuance of warrants and shall include information sufficient to demonstrate that the child meets all eligibility criteria established in regulations by the State Department of Mental Health, developed in consultation with the State Department of Education.

(b) The county welfare department shall submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed children for 24–hour out–of–home care.

(Added by Stats.1985, c. 1274, § 15, eff. Sept. 30, 1985.)

§ 18352. Agreements with other local agencies

County welfare departments may, at their option and with approval of the State Department of Social Services and other appropriate agencies, enter into agreements with other local agencies for the delivery of a single payment for all related services for a seriously emotionally disturbed child to a residential care provider.

(Added by Stats.1985, c. 1274, § 15, eff. Sept. 30, 1985.)

§ 18353. Identification of facilities; placements

When an individualized education program calls for 24–hour out–of–home care, the county welfare department shall provide assistance, as necessary, in identifying a facility suited to the child's needs and in placing the child in the facility.

(Added by Stats.1985, c. 1274, § 15, eff. Sept. 30, 1985.)

§ 18354. Review of determination of eligibility for payment

(a) If a provider of 24–hour out–of–home care to a child who has been placed pursuant to Section 7572.5 of the Government Code in a 24–hour out–of–home placement disputes an action of the designated county mental health agency regarding the providers eligibility for payment, the provider may request a review of the issue by the designated county mental health agency. Designated county mental health agencies may establish policies and procedures, as may be necessary, to implement this subdivision.

(b) If the issue remains unresolved after the review by the designated county mental health agency, then the provider may request a review of the issue by the State Department of Mental Health. The Director of Mental Health may establish policies and procedures, as may be necessary, to implement this subdivision. The review under this subdivision shall be limited to the issue of whether the eligibility for payment criteria established by the State Department of Mental Health was correctly applied.

(Added by Stats.1985, c. 1274, § 15, eff. Sept. 30, 1985.)

§ 18355. Funding

Notwithstanding any other provision of the law, 24–hour out–of–home care for seriously emotionally disturbed children who are placed in accordance with Section 7572.5 of the Government Code shall be funded from a separate appropriation in the budget of the State Department of Social Services in order to fund both 24–hour out–of–home care payment and local administrative costs. Reimbursement for 24–hour out–of–home care payment costs shall be from that appropriation, subject to the same sharing ratio as prescribed in subdivision (c) of Section 15200, and available funds. Reimbursements for local administrative costs shall also be from that appropriation, subject to the same sharing ratio as prescribed in Section 15204.2 for the Aid to Families with Dependent Children program, and available funds.

(Added by Stats.1985, c. 1274, § 15, eff. Sept. 30, 1985.)

§ 18355.5. Reimbursement to county from multiple sources; restrictions upon

Notwithstanding any other provision of law, counties shall not claim reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs of 24–hour out–of–home care for seriously emotionally disturbed children who are placed in accordance with Section 7572.5 of the Government Code, if those costs are claimed by the county under this chapter and the county receives reimbursement for those costs through the Local Revenue Fund established pursuant to Section 17600.

(Added by Stats.2005, c. 78 (S.B.68), § 36.5, eff. July 19, 2005.)

§ 18356. Out–of–state placements; reports

(a) When a local mental health department places a client out–of–state pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, it shall prepare a report for the Director of Mental Health. The report shall be sent to the State Department of Mental Health within 15 days after the actual placement.

(b) The report shall summarize the local mental health department's efforts to locate, develop, or adapt an appropriate program for the client within the state. The report shall also identify the circumstances which led to out–of–state placement, including the child's experience with California placements, distance from the child's family, child treatment needs which cannot be met in a California placement, and any other factors leading to the placement.

(c) The report shall identify any special circumstances, such as legal interventions, including mediation hearings, fair hearings, compliance complaints, or any other legal procedure resulting in an order which mandates the child's placement out of state.

(d) The report shall identify provisions for case management, case supervision, and family visitation in the case of out–of–state placements.

(Added by Stats.1990, c. 737 (A.B.3596), § 2.)

Chapter 12.8 INTERAGENCY CHILDREN'S SERVICES ACT

Article 1 GENERAL PROVISION AND DEFINITIONS

§ 18986. Short title

This chapter shall be known and may be cited as the Presley–Brown Interagency Children's Services Act.

(Added by Stats.1989, c. 1303, § 1.)

§ 18986.1. Legislative findings and declarations

The Legislature finds and declares all of the following:

(a) According to Policy Analysis of California Education (PACE):

(1) In 1988, California had a population of 7.4 million children; by the year 2000, the population of California's children will rise to 8.7 million, a 22–percent increase; California's share of children increased from one out of nine in the United States to one out of eight. By 1995, California school enrollment will equal the total enrollment of the 24 smallest states.

(2)(A) California's children are becoming more linguistically, culturally, and ethnically diverse. A majority of California's children are now minorities and the fastest growing are Hispanics and Asians.

(B) By the year 2000, 42 percent of the children in California will be Caucasian, 13 percent will be Asian, 36 percent will be Hispanic, and 9 percent will be Black.

(C) One–fourth of California school children speak a language other than English at home.

(3) The number of immigrant children in California is the largest of any state and that number is growing. California receives 27 percent of the nation's immigrants but has only 11 percent of the nation's population. The experience of immigrants from different cultures will vary and requires different public policies.

(4) Since 1980, the number of children in poverty in California has increased 50 percent and is now 23 percent above the national average. Poverty is associated with numerous problems, including low educational performance, poor nutrition, child abuse, and delinquency.

(5) There has been an alarming increase in extremely vulnerable children. Ten to 15 percent of infants born in public hospitals in large cities are drug–or alcohol–addicted. These children require intensive services and are overwhelming California's foster care capacity.

(6) There have been major changes from the past in female and teenage work behavior. The high percentage (54 percent) of children with both parents working means that the quality of child care is very important. By the year 2000, 60 percent of parents will work full time. Publicly supported child care, however, covers only 8 percent of the eligible low–income population. The growth in the number of teenagers working (about 45 percent work 16 hours or more a week) leaves less time for leisure activities or homework.

(b) There is no adequate comprehensive system for the delivery of services to children and youth; instead, services to children are provided by various departments and agencies at both the state and county levels, often without appropriate collaboration, resulting in gaps in services and program duplication.

(c) Too often, resources are not available to provide preventive services to children and families which would alleviate the need for a more costly response to a later crisis. The current service delivery system promotes intervention at the latest, most costly, and least effective point. A greater focus on prevention rather than intervention maximizes the expenditure of state funds and results in the provision of more effective services to children.

(d) The facts and trends cited in this section require the state's major policies and institutions to engage in planning and coordinating services to meet the needs of the state's growing and changing population of children and to develop alternative ways of organizing and allocating resources for services.

(Added by Stats.1989, c. 1303, § 1.)

§ 18986.2. Legislative intent; goal of collaborative delivery system of services

It is the intent of the Legislature, in enacting this chapter, to encourage the development of a comprehensive and collaborative delivery system of services to children and youths at the state and local level and to offer fiscal incentives in the form of waivers and negotiated contracts to encourage collaboration. The goal of that collaborative system shall be to:

(a) Develop a service delivery plan which emphasizes preventive and early intervention services that maximize the healthy development of children and minimize the long–term need for public resources.

(b) Allow for flexibility of expenditures in public funds.

(c) Emphasize local decisionmaking and provide for greater flexibility to local government in designing delivery systems.

(d) Provide for a continuum of family–centered, child–focused services through public/private partnerships within the community.

(e) Minimize duplicate administrative systems.

(f) Identify gaps in services to target populations.

(g) Provide case management services to children and families with multiple needs.

(h) Involve school districts in the planning and delivery of coordinated services for children.

(Added by Stats.1989, c. 1303, § 1. Amended by Stats.1991, c. 994 (S.B.786), § 2.)

§ 18986.3. Definitions

For purposes of this chapter, the following definitions shall apply:

(a) "Children's services" means any services provided by any state or local agency or private entity for the health, safety, or well–being of minors.

(b) "Council" means an interagency children's services coordinating council established pursuant to Section 18986.10.

(c) "Secretary of Child Development and Education" means a cabinet level officer appointed by the Governor.

(Added by Stats.1989, c. 1303, § 1. Amended by Stats.1991, c. 994 (S.B.786), § 3.)

Article 2 COUNTY INTERAGENCY COLLABORATION

§ 18986.10. Establishment of coordination council

The board of supervisors of any county or city and county may establish an interagency children's services coordination council.

(Added by Stats.1989, c. 1303, § 1.)

§ 18986.11. Membership of coordination council

A council shall be comprised of, but not be limited to, the following members:

(a) Persons responsible for management of the following county functions:

(1) Alcohol and drug programs.

(2) Children's services.

(3) Housing and redevelopment.

(4) Mental health services.

(5) Probation.

(6) Public health services.

(7) Welfare or public social services.

(b) The presiding judge of the county's juvenile court.

(c) The superintendent of the county office of education and at least one superintendent of a unified school district within the county.

(d) A prosecuting attorney of the county or city and county.

(e) A representative of a private nonprofit corporation which has a goal of entering into a public private partnership with the county to meet the needs of children that are not adequately met by existing public or private funds.

(f) One member of the county board of supervisors.

(g) A representative of law enforcement.

(h) A representative of the local child abuse council.

(i) A representative of a local planning agency participating in the California Early Intervention Program pursuant to Subchapter VIII (commencing with Section 1471) of Chapter 33 of Title 20 of the United States Code.

(j) A representative of the local child care resource and referral agency or other local child care coordinating group.

(k) A representative, or representatives, of one or more community–based organizations with ties to the ethnic communities served in the area.

(Added by Stats.1989, c. 1303, § 1. Amended by Stats.1991, c. 994 (S.B.786), § 4; Stats.1992, c. 552 (A.B.3805), § 1.)

§ 18986.12. Meetings of coordination council

(a) The council shall convene monthly and shall, in addition, convene at least two public meetings annually inviting public testimony.

(b) Meetings of the council shall be convened by an executive director who is appointed by the county board of supervisors.

(Added by Stats.1989, c. 1303, § 1.)

§ 18986.13. Existing interagency children's services coordinating body; designation as coordination council; modification

The county board of supervisors may designate an existing, duly established interagency children's services coordinating body as the county's interagency children's services coordination council as authorized by Section 18986.10. However, the membership, responsibilities, and duties of that existing body shall be modified by the board as necessary to conform to the requirements of this chapter.

(Added by Stats.1989, c. 1303, § 1.)

§ 18986.14. Duties of coordination council

The council's duties shall include, but not be limited to, the following:

(a) Ensuring collaboration and countywide planning for the provision of children's services.

(b) Identifying those agencies that have a significant joint responsibility in providing services to children and families.

(c) Identifying gaps in services to specific populations.

(d) Developing policies and setting priorities to ensure service effectiveness.

(e) Implementing public and private collaborative programs whenever possible.

(f) Providing for countywide interagency case management to coordinate resources, especially for those children and their families who are using the services of more than one agency concurrently.

(g) Identify, coordinate with, and, where feasible, integrate with existing children's services groups and other coordinating bodies.

(Added by Stats.1989, c. 1303, § 1.)

§ 18986.15. Program by counties for phasing in coordinated children's services system; plan for coordinated children's services; proposal for development of system

Each county wishing to participate under this chapter shall develop a three–year program for phasing in a coordinated children's services system.

(a) A plan for coordinated children's services may include proposals to combine and coordinate services to one or more of the following special populations of children provided by two or more existing local service agencies:

(1) Abused or neglected children and those at risk of abuse or neglect.

(2) Children in foster care or at risk of entering foster care.

(3) Children requiring mental health services.

(4) Children needing health care services delivered by local maternal and child health services, including, but not limited to, services provided under the California Children's Services Program, the Child Health and Disability Prevention Program, and perinatal services.

(5) Delinquent, status offender, and homeless minors.

(6) Minors in need of job training and placement services.

(7) School dropouts, or those at risk of dropping out.

(8) Infants born with identified drug dependencies and children with known histories of substance abuse.

(9) Children with developmental disabilities.

(10) Children in need of preschool or child care services.

(b) Plans shall include all of the following:

(1) Use of existing service capabilities within the various agencies currently serving children's needs in the county.

(2) Interagency collaboration and program consolidation among publicly and privately funded agencies providing services to children.

(3) Appropriate interagency protocols and agreements.

(4) Services for the most vulnerable or at–risk children.

(5) Services which permit children to reside in their usual family setting whenever possible and in their best interest.

(6) Components designed to promote an effective case management system.

(7) Estimates of cost benefits and cost avoidance of the program proposal.

(8) A specific list of the benefits to children under the plan, including objective measures of successful outcome and program effectiveness.

(c) No later than July 1 of each year, any county that wishes to participate pursuant to this chapter shall submit to the county board of supervisors a program proposal for the development of a coordinated system of children's services.

(Added by Stats.1989, c. 1303, § 1. Amended by Stats.1991, c. 994 (S.B.786), § 5.)

Article 3 WAIVERS

§ 18986.20. Requests for waiver; state regulations hindering coordination of children's services; negotiated contracts; reallocation of existing resources

(a) Any county that wishes to participate under this chapter and that develops a three–year program of coordinated children's services pursuant to Section 18986.15, may, as a part of its plan, request a waiver of existing state regulations pertaining to requirements which hinder coordination of children's services. The county may also request authorization to enter into a negotiated contract which enables the repositioning and reallocation of existing resources to facilitate integrated case management and coordination among participating agencies.

(b) Requests for waivers or negotiated contracts shall be submitted in writing, with a detailed description of the county's plan for coordinated children's services and a detailed description of the need for the waiver or negotiated contract to the Secretary of the Health and Welfare Agency, the Superintendent of Public Instruction, the Attorney General, the Secretary of the Youth and Adult Correctional Agency, and the Secretary of Child Development and Education. Requests for negotiated contracts shall also be submitted to the Department of Finance.

(Added by Stats.1989, c. 1303, § 1. Amended by Stats.1991, c. 994 (S.B.786), § 6.)

§ 18986.21. Grant of waivers; contents of requests

(a) A waiver or waivers may be granted pursuant to this chapter when existing regulations hinder the coordination of children's services and when waivers would facilitate the implementation of this chapter.

(b) Any request for a waiver under this chapter shall contain, at a minimum, all of the following:

(1) The regulation or regulations for which the county requests a waiver.

(2) A statement regarding why the identified regulation or regulations should be waived.

(3) A statement regarding why the identified regulation or regulations inhibit the efficient administration of the program.

(4) A comparison of the following:

(A) The services and the number of persons to be served under the requested waiver.

(B) The services and the number of persons to be served without the requested waiver.

(5) Projected costs or savings due to the requested waiver.

(6) Any impact on state and federal funding.

(c) When approving a county request for a waiver pursuant to this chapter, the entity granting the waiver shall ensure all of the following:

(1) Services and eligible persons served under the affected program are maintained.

(2) There is no increase in costs to the state or to clients.

(3) There is no loss of federal financial participation.

(Added by Stats.1989, c. 1303, § 1. Amended by Stats.1991, c. 611 (A.B.1491), § 111, eff. Oct. 7, 1991; Stats.1991, c. 994 (S.B.786), § 7.)

§ 18986.22. Negotiated contracts; award; definition; contents

(a) A negotiated contract may be awarded pursuant to this chapter when existing regulations and categorical programs hinder the coordination of children's services and prohibit integrated case management.

(b) A negotiated contract means an agreement entered into between the state and the county pursuant to Section 18986.23 which authorizes the reallocation of existing resources from participating agencies for purposes specified in each contract.

(c) Each negotiated contract shall specify all of the following:

(1) The target population to be served.

(2) The core services to be offered.

(3) The net amount of resources to be reallocated and pooled.

(4) Intake and eligibility criteria.

(5) Provisions for sharing data between agencies while maintaining client confidentiality.

(6) Evaluation measures, including specific outcomes and performance criteria to be achieved as a condition of the negotiated contract and appropriate sanctions if evaluation measures are not met.

(7) The duration of the contract period, including provisions for contract renewal.

(8) any other provisions which are deemed necessary to ensure program and fiscal accountability.

(Added by Stats.1991, c. 994 (S.B.786), § 8.)

§ 18986.23. Grant of waivers and negotiated contracts; entities with authority

Waivers and negotiated contracts shall be granted pursuant to this chapter by the Secretary of the Health and Welfare Agency, the Superintendent of Public Instruction, the Attorney General, or the Secretary of the Youth and Adult Correctional Agency, in consultation with the Secretary of Child Development and Education and the Department of Finance as follows:

(a) The Secretary of the Health and Welfare Agency shall grant waivers or negotiated contracts for programs under his or her jurisdiction, in consultation with the Superintendent of Public Instruction, the Attorney General, the Secretary of the Youth and Correctional Agency, and the Secretary of Child Development and Education.

(b) The Superintendent of Public Instruction shall grant waivers or negotiated contracts for programs under his or her jurisdiction, in consultation with the Attorney General, the Secretary of the Health and Welfare Agency, the Secretary of the Youth and Adult Correctional Agency, and the Secretary of Child Development and Education.

(c) The Attorney General shall grant waivers or negotiate contracts for programs under his or her jurisdiction in consultation with the Superintendent of Public Instruction, the Secretary of the Health and Welfare Agency, the Secretary of the Youth and Adult Correctional Agency, and the Secretary of Child Development and Education.

(d) The Secretary of the Youth and Adult Correctional Agency shall grant waivers or negotiate contracts for programs under his or her jurisdiction in consultation with the Attorney General, the Superintendent of Public Instruction, the Secretary of the Health and Welfare Agency, and the Secretary of Child Development and Education.

(e) The entity to whom a request for a waiver or negotiated contract is submitted pursuant to this section shall issue written notice of the granting of the waiver, any delay in the consideration of the waiver request, or denial of the requested waiver within 60 days of the receipt of the request. Any county may appeal a negative decision regarding a requested waiver or negotiated contract.

(f) In addition to approval required by subdivisions (a) to (d), inclusive, all requests for negotiated contracts shall be approved by the Department of Finance.

(Formerly § 18986.22, added by Stats.1989, c. 1303, § 1. Renumbered § 18986.23 and amended by Stats.1991, c. 994 (S.B.786), § 9.)

§ 18986.24. Notice to legislature

The Secretary of Child Development and Education, the Secretary of the Health and Welfare Agency, the Superintendent of Public Instruction, the Attorney General, or the Secretary of the Youth and Adult Correctional Agency shall notify the appropriate policy committees and fiscal committees of the Legislature no later than 30 days before any waiver or negotiated contract granted pursuant to this article take effect.

(Formerly § 18986.23, added by Stats.1989, c. 1303, § 1. Renumbered § 18986.24 and amended by Stats.1991, c. 994 (S.B.786), § 10.)

Article 4 EVALUATION

§ 18986.30. Review and report to legislature; annual progress of councils; programs deemed successful

Two years after the approval of an initial waiver or negotiated contract request pursuant to Sections 18986.20 to 18986.24, inclusive, the department shall review and report to the Legislative Analyst on the progress of the councils for which fiscal incentives and necessary waivers or negotiated contracts to establish the council's programs have been approved and granted. Programs to coordinate comprehensive children's services shall be deemed successful based upon the following:

(a) The county's ability to meet specific success criteria as specified in its overall plan.

(b) The county's ability to demonstrate cost avoidance which equals or exceeds the cost of the plan. This cost avoidance shall include the following categories, where appropriate:

(1) Group home costs paid by Aid to Families with Dependent Children–Foster Care (AFDC–FC).

(2) Children and adolescent state hospital programs.

(3) Juvenile justice recidivism or reincarceration.

(4) Nonpublic school residential placement costs.

(5) Other short–term and long–term savings in public funds resulting from the plans.

(c) The Legislative Analyst shall submit a review of the report to the Legislature.

(Added by Stats.1989, c. 1303, § 1. Amended by Stats.1991, c. 994 (S.B.786), § 11; Stats.1992, c. 1296 (S.B.986), § 24, eff. Sept. 30, 1992.)

Chapter 12.9 INTEGRATED CHILDREN'S SERVICES PROGRAMS

§ 18986.40. Integrated children's services programs; children's multidisciplinary services team; crisis intervention services

(a) For the purposes of this chapter, "program" or "integrated children's services programs" means a coordinated children's service system, operating as a program that is part of a department or State Department of Mental Health initiative, that offers a full range of integrated behavioral social, health, and mental health services, including applicable educational services, to seriously emotionally disturbed and special needs children, or programs established by county governments, local education agencies, or consortia of public and private agencies, to jointly provide two or more of the following services to children or their families, or both:

(1) Educational services for children at risk of dropping out, or who need additional educational services to be successful academically.

(2) Health care.

(3) All mental health diagnostic and treatment services, including medication.

(4) Substance abuse prevention and treatment.

(5) Child abuse prevention, identification, and treatment.

(6) Nutrition services.

(7) Child care and development services.

(8) Juvenile justice services.

(9) Child welfare services.

(10) Early intervention and prevention services.

(11) Crisis intervention services, as defined in subdivision (c).

(12) Any other service which will enhance the health, development, and well–being of children and their families.

(b) For the purposes of this chapter, "children's multidisciplinary services team" means a team of two or more persons trained and qualified to provide one or more of the services listed in subdivision (a), who are responsible in the program for identifying the educational, health, or social service needs of a child and his or her family, and for developing a plan to address those needs. A family member, or the designee of a family member, shall be invited to participate in team meetings and decisions, unless the team determines that, in its professional judgment, this participation would present a reasonable risk of a significant adverse or detrimental effect on the minor's psychological or physical safety. Members of the team shall be trained in the confidentiality and information sharing provisions of this chapter.

(c) "Crisis intervention services" means early support and psychological assistance, to be continued as necessary, to children who have been victims of, or whose lives have been affected by, a violent crime or a cataclysmic incident, such as a natural disaster, or who have been involved in school, neighborhood, or family based critical incidents likely to cause profound psychological effects if not addressed immediately and thoroughly.

(Added by Stats.1991, c. 1205 (A.B.2184), § 4. Amended by Stats.1993, c. 111 (A.B.1167), § 1; Stats.1998, c. 509 (A.B.1801), § 1.)

§ 18986.46. Disclosure of information and records; children's multidisciplinary services teams; construction of section

(a) A program shall utilize children's multidisciplinary services teams, as defined in this chapter.

(b) A team member shall provide program services only as employed by, under contract with, or otherwise affiliated with, the program, and shall not share information, or provide program services, when acting as a separate local, state, or private agency or entity.

(c) A program shall be considered a single program for purposes of federal substance abuse program regulations contained in Part 2 (commencing with Section 2.1) of Title 42 of the Code of Federal Regulations.

(d) Notwithstanding any other provision of law regarding disclosure of information and records, a program shall be permitted to establish a unified services record for a child and family. That record shall contain all records of prior services that are released to the program and that are relevant and necessary to formulate an integrated services plan, pursuant to valid written authorizations, as well as a record of all service provided under the program.

(e) Notwithstanding any other provision of law regarding disclosure of information and records, when a child enters the program a parent, guardian, judicial office with jurisdiction over the minor, or a minor with legal power to consent, shall be asked to sign a single authorization that gives a knowing and informed consent, in writing, and that complies with all other applicable provisions of state law governing release of medical, mental health, social service, and educational records, and that covers multiple service providers, in order to permit the release of records to the program. This single authorization shall not include adoption records. The authorized representative of the child, or the child in a case where he or she has the legal right to consent, shall be fully apprised of the requirements of this subdivision prior to participation in the program. Before information may be exchanged about a particular child or family pursuant to this chapter, a representative of the program shall do all of the following:

(1) Explain to the authorized representative of the child, or the child in a case where he or she has the legal right to consent, both of the following, and this explanation shall be given before any information about the child or family is recorded and before any services are provided:

(A) Information provided by the child or family may only be exchanged within the program with the express written consent of the authorized representative.

(B) Information shall not be disclosed to anyone other than members of the multidisciplinary children's services team, and those qualified to receive information as explained in subdivision (i).

(2) The authorized representative of the child, or the child in a case where he or she has the legal right to consent, shall be informed that he or she has a right to refuse to sign, or to limit the scope of, the consent form, and that a refusal to sign, or to limit the scope of, the consent form will not have an adverse impact on the client's eligibility for services under the programs described in this chapter.

(f) The knowing and informed consent given pursuant to this chapter shall only be in force for the time that the child or family is a client of the program.

(g)(1) Notwithstanding any provision of state law governing the disclosure of information and records, persons who are trained, qualified, and assigned by their respective agencies to serve on teams within a program and other team members included pursuant to this chapter may view relevant sections of unified program records and may disclose to one another relevant information and view records on a child or the child's family as necessary to formulate an integrated services plan or to deliver services to children and their families.

(2) This information and records may include information relevant to the evaluation of the child and his or her family, the development of a treatment plan for the child and his or her family, and the delivery of services. Relevant information and records shall be shared with family members or family designees on the team, except information or records, if any, disclosure of which the team determines would present a reasonable risk of a significant adverse or detrimental effect on the minor's psychological or physical safety.

(h)(1) If the members of a multidisciplinary services team within an integrated children's services program require records held by other team members, copies may be provided to them.

(2) Notwithstanding any other provisions of law regarding disclosure of information and records, a program may establish and maintain a common data base for the purpose of delivering services under the program. The data base may contain demographic data and may identify the services recommended for, and provided to, a child and his or her family by the program. The data base shall be for use and disclosure only within the program, except by properly authorized consent by a parent, guardian, judicial officer with jurisdiction over the child, or a minor with the legal power to consent.

(3) The program may authorize use of information contained in the data base for bona fide evaluation and research purposes, unless otherwise prohibited by law. No information disclosed under this paragraph shall permit identification of the individual patient or client. The release of copies of mental health records, physical health records, and drug or alcohol records in programs establishing a unified services record shall be governed by the single authorization of informed and knowing consent to release these records. In programs not establishing a unified services record and not utilizing the single authorization of informed and knowing consent, release of these records may take place only after the team has received a form permitting release of records on the child or the child's family, signed by the child, to the extent the records were generated as a result of health care services to which the child has the power to consent under state law, or, to the extent that the records have not been generated by the provision of these health care services, by the child's parent, guardian, or legal representative, including the court which has jurisdiction over those children who are wards or dependents of the court.

(i) The multidisciplinary team may designate persons qualified pursuant to Section 18986.40 to be a member of the team for a particular case. A person designated as a team member pursuant to this subdivision may receive and disclose relevant information and records, subject to the confidentiality provisions of subdivision (k).

(j) The sharing of information permitted under subdivision (g) shall be governed by memoranda of understanding among the participating service providers or agencies in the coordinated children's service system or program. These memoranda shall specify the types of information that may be shared without a signed release form, in accordance with subdivision (e), and the process to be used to ensure that current confidentiality requirements, as described in subdivision (k), are met. This paragraph shall not be construed to waive any right of privilege contained in the Evidence Code, except in compliance with Section 912 of that code.

(k) Every member of the children's multidisciplinary services team who receives information or records on children and families served in the integrated children's services program shall be under the same privacy and confidentiality obligations and subject to the same confidentiality penalties as the person disclosing or providing the information or records. The information or records obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(*l*) This section shall not be construed to restrict guarantees of confidentiality provided under federal law.

(m) Information and records communicated or provided to the program, by all providers, programs, and agencies, as well as information and records created by the program in the course of serving its children and their families, shall be deemed private and confidential and shall be protected from discovery and disclosure by all applicable statutory and common law protections. Civil and criminal penalties shall apply to the inappropriate disclosure of information held by the program. Nothing in this section shall be construed to affect the authority of a health care provider to disclose medical information pursuant to paragraph (1) of subdivision (c) of Section 56.10 of the Civil Code.

(Added by Stats.1992, c. 477 (A.B.3688), § 1. Amended by Stats.1994, c. 1038 (A.B.2488), § 2; Stats.1998, c. 509 (A.B.1801), § 2.)

Chapter 12.86 CHILDRENS SERVICES PROGRAM DEVELOPMENT

§ 18987.6. Legislative intent

It is the intent of the Legislature to do all of the following:

(a) Permit all counties to provide children with service alternatives to group home care through the development of expanded family–based services programs and to expand the capacity of group homes to provide services appropriate to the changing needs of children in their care.

(b) Encourage collaboration among persons and entities including, but not limited to, parents, county welfare departments, county mental health departments, county probation departments, county health departments, special education local planning agencies, school districts, and private service providers for the purpose of planning and providing individualized services for children and their birth or substitute families.

(c) Ensure local community participation in the development of innovative delivery of services by county placing agencies and service providers and the use of the service resources and expertise of nonprofit providers to develop family–based and community–based service alternatives.

(Added by Stats.1998, c. 311 (S.B.933), § 71, eff. Aug. 19, 1998.)

§ 18987.61. Performance agreements with private, nonprofit agencies

(a) Each county may enter into performance agreements with private, nonprofit agencies to encourage innovation in the delivery of children's services, to develop services not available in the community, and to promote change in the child welfare services system.

(b) In developing the agreements, counties and service providers shall pursue services that enhance the ability of children to remain in the least restrictive, most family–like setting possible and promote services that address the needs and strengths of individual children and their families.

(c) Programs developed pursuant to this section shall operate within the county, or in another county with the approval of that county.

(d) Agreements pursuant to subdivision (a) shall be for a period of up to three years.

(e) A county shall provide a report to the director within three months of the end of each agreement to report on the details of the agreement, the results achieved during its operation, and the applicability of the approach to a wider population. The director shall make these reports available to the Legislature upon request.

(Added by Stats.1998, c. 311 (S.B.933), § 71, eff. Aug. 19, 1998.)

§ 18987.62. Waiver of regulations governing foster care payments or operation of group homes; conditions

(a) Upon request from a county, the director may waive regulations governing foster care payments or the operation of group homes to enable counties to implement the agreements established pursuant to Section 18987.61. Waivers granted by the director shall be applicable only to services provided under the terms of the agreement and for the duration of the agreement. A waiver shall only be granted when all of the following apply:

(1) The agreement promises to offer a worthwhile test of an innovative approach or to encourage the development of a new service for which there is a recognized need.

(2) The regulatory requirement prevents the implementation of the agreement.

(3) The requesting county proposes to monitor the agreement through performance measures that ensure that the purposes of the waived regulation will be achieved.

(b) The director shall take steps that are necessary to prevent the loss of any substantial amounts of federal funds as a result of the waivers granted under this section. The waiver may specify the extent to which the requesting county shall share in any cost resulting from any loss of federal funding.

(c) The director shall not waive regulations that apply to the health and safety of children served by participating private agencies.

(d) The director shall notify the appropriate policy and fiscal committees of the Legislature whenever waivers are granted and when a waiver of regulations was required for the implementation of the county's proposed agreement. The director shall identify the reason why the development of the services outlined by the agreement between the county and the service provider are hindered by the regulations to be waived.

(Added by Stats.1998, c. 311 (S.B.933), § 71, eff. Aug. 19, 1998.)

Chapter 12.95 SAN MATEO COUNTY CONSOLIDATED HUMAN SERVICES AGENCY

Explanatory Note

For another Chapter 12.95, Interagency Day Care Program, added by Stats.1993, c. 970 (A.B.1166), § 2, see Welfare and Institutions Code § 18986.50 et seq.

§ 18989. Waiver of existing state regulations; request by established agency; requirements

(a) Any agency established by San Mateo County for purposes of providing any combination of human services may apply for a waiver of existing state regulations pertaining to single agency operations and auditing and accounting requirements that hinder the coordination of human services provided by that agency.

(b) When the services to be coordinated are any combination of those listed in Section 18986.11, the process for requesting and granting a waiver shall conform to the requirements of Article 3 (commencing with Section 18986.20) of Chapter 12.8.

(c) When the services to be coordinated include services that are not listed in Section 18986.11, the process for requesting and granting a waiver shall conform to the requirements of Sections 18989.1 and 18989.2.

(d) Any request for a waiver of confidentiality requirements to permit a sharing of information within the county agency shall conform to the requirements of Section 18986.45 and shall be only for purposes of consolidated case management.

(e) In no event shall the waiver request violate Chapter 6 (commencing with Section 17600) of Part 5.5.

(f) In no event shall a waiver be granted for modifications to regulations governing qualifications for professionals employed in human service programs that are consolidated by the county.

(Added by Stats.1992, c. 1155 (S.B.1347), § 1.)

§ 18989.1. Request for waiver; contents

Any request under this chapter shall contain, at a minimum, all of the following:

(a) The regulation or regulations for which the county requests a waiver.

(b) A statement as to why the identified regulation or regulations should be waived.

(c) A statement as to why the identified regulation or regulations inhibit the efficient administration of the program.

(d) A comparison of the following:

(1) The services and the number of persons to be served under the requested waiver.

(2) The services and the number of persons to be served without the requested waiver.

(e) Projected costs or savings due to the requested waiver.

(f) Any impact on state and federal funding.

(g) A statement that the collective bargaining agent or agents for any affected employees have been provided with notice of the waiver and the information included in the waiver.

(Added by Stats.1992, c. 1155 (S.B.1347), § 1.)

§ 18989.2. Request for waiver; approval; requirements

The request for waiver shall be submitted to the Secretary of the Health and Welfare Agency. When approving a request for a waiver pursuant to this chapter, the Secretary of the Health and Welfare Agency shall ensure all of the following:

(a) Services and eligible persons served under the affected program or programs are maintained.

(b) There is no increase in costs to the state or to clients.

(c) There is no loss of federal financial participation.

(d) The waiver does not revise the implementation of the requirements of Chapter 6 (commencing with Section 17600) of Part 5.5 regarding the realignment of health, mental health, and social services programs.

(e) The Secretary of the Health and Welfare Agency shall notify the appropriate policy and fiscal committees of the Legislature no later than 30 days before any waiver or waivers pursuant to this chapter take effect.

(Added by Stats.1992, c. 1155 (S.B.1347), § 1.)