

**ASSEMBLY BILL**

**No. 438**

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**Introduced by Assembly Member Beall**

February 24, 2009

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An act to add Section 7578.5 to the Government Code, to amend Section 1001.21 of the Penal Code, and to amend Section 4418.7 of, and to add and repeal Section 4418.8 of, the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 438, as introduced, Beall. Persons with developmental disabilities: criminal proceedings: diversion.

Existing law, the Lanterman Developmental Disabilities Services Act grants persons with developmental disabilities the right to receive treatment and services to meet their needs, regardless of age or degree of disability, at each stage of life. Existing law requires that the state pay for these services through contracts with various private nonprofit corporations for the operation of regional centers for the developmentally disabled, and requires regional centers to develop an individual program plan for each consumer that sets forth the treatment and services to be provided for the consumer.

Existing law establishes a process diversion of defendants cognitive developmental disabilities in criminal proceedings for an offense which is charged as, or reduced to, a misdemeanor, but excludes persons who have been previously diverted.

This bill would make these procedures applicable for an offense that is charged or reduced to a nonviolent felony, as defined, and would delete the exclusion for those previously diverted.

This bill would require the State Department of Developmental Services and the Department of Corrections and Rehabilitation to establish and enter into an interagency agreement for the sharing of information and data, to include a protocol and procedures by which regularly updated information and data on adults and juveniles with developmental disabilities served by the Department of Corrections and Rehabilitation to be shared with the State Department of Developmental Services.

Existing law requires a regional center to immediately notify the appropriate regional resource development project, the consumer, and the consumer’s parents, legal guardian, or conservator, if the regional center determines, or is informed, that the community placement of a consumer is at risk of failing, and that admittance to a state developmental center is a likelihood.

This bill would apply these notice requirements to a situation in which a consumer, who is a current state developmental center resident, whose placement based on incompetence to stand trial is due to end, and who is at risk of being placed in, or is at risk of continued placement in, a state developmental center.

This bill would also require the department, by July 1, 2010, to convene a task force to identify strategies and best practices for local interagency coordination and cooperation in addressing the needs of adults and juveniles with developmental disabilities in the criminal and juvenile justice systems. The bill would require the task force to issue its interim reports to the Legislature on the progress of its work by July 1, 2011, and July 1, 2012, and to issue its final report to the Legislature by July 1, 2013.

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

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

- 1 SECTION 1. Section 7578.5 is added to the Government Code,
- 2 to read:
- 3 7578.5. (a) To ensure timely planning for the provision of
- 4 developmental disabilities services by the State Department of
- 5 Developmental Services and regional centers to persons with
- 6 developmental disabilities served by the Department of Corrections
- 7 and Rehabilitation upon their release from a facility or program
- 8 operated by the Department of Corrections and Rehabilitation, by

1 July 1, 2010, the State Department of Developmental Services and  
2 the Department of Corrections and Rehabilitation shall establish  
3 and enter into an interagency agreement for the sharing of  
4 information and data.

5 (b) The interagency agreement shall include a protocol and  
6 procedures by which regularly updated information and data on  
7 adults and juveniles with developmental disabilities served by the  
8 Department of Corrections and Rehabilitation will be shared with  
9 the State Department of Developmental Services. This aggregate  
10 information shall include, but need not be limited to both of the  
11 following:

12 (1) The number of individuals with identified developmental  
13 disabilities or who are believed to have developmental disabilities  
14 residing in each Department of Corrections and Rehabilitation  
15 operated facility.

16 (2) The number of these individuals who are known to be clients  
17 of a regional center and, for these individuals, the number and age  
18 breakdown by regional center.

19 (c) The interagency agreement shall include a protocol for notice  
20 by the Department of Corrections and Rehabilitation to the regional  
21 center of the anticipated date of the release of a person identified  
22 with developmental disabilities.

23 (d) Nothing in this section shall be construed to alter  
24 requirements for the disclosure of confidential information and  
25 records under existing law, including Section 4514 of the Welfare  
26 and Institutions Code.

27 SEC. 2. Section 1001.21 of the Penal Code is amended to read:

28 1001.21. (a) This chapter shall apply whenever a case is before  
29 any court upon an accusatory pleading at any stage of the criminal  
30 proceedings, for any person who has been evaluated by a regional  
31 center for the developmentally disabled and who is determined to  
32 be a person with a cognitive developmental disability by the  
33 regional center, and who therefore is eligible for its services.

34 (b) This chapter applies to any offense which is charged as or  
35 reduced to a misdemeanor, ~~except that diversion shall not be~~  
36 ~~ordered when the defendant previously has been diverted under~~  
37 ~~this chapter within two years prior to the present criminal~~  
38 ~~proceedings or nonviolent felony. For the purposes of this section,~~  
39 ~~“nonviolent felony” is any felony that is not a “violent felony” as~~  
40 ~~that term is defined in subdivision (c) Section 667.5.~~

1 ~~(e) This chapter shall apply to persons who have a condition~~  
2 ~~described in paragraph (2) or (3) of subdivision (a) of Section~~  
3 ~~1001.20 only if that person was a client of a regional center at the~~  
4 ~~time of the offense for which he or she is charged.~~

5 SEC. 3. Section 4418.7 of the Welfare and Institutions Code  
6 is amended to read:

7 4418.7. (a) If the regional center determines, or is informed  
8 by the consumer’s parents, legal guardian, conservator, or  
9 authorized representative that the community placement of a  
10 consumer is at risk of failing, and that admittance to a state  
11 developmental center is a likelihood, the regional center shall  
12 immediately notify the appropriate regional resource development  
13 project, the consumer, and the consumer’s parents, legal guardian,  
14 or conservator.

15 (b) In these cases, the regional resource development project  
16 shall immediately arrange for an assessment of the situation,  
17 including, visiting the consumer, if appropriate, determining  
18 barriers to successful integration, and recommending the most  
19 appropriate means necessary to assist the consumer to remain in  
20 the community. If, based on the assessment, the regional resource  
21 development project determines that additional or different services  
22 and supports are necessary, the department shall ensure that the  
23 regional center provides those services and supports on an  
24 emergency basis. An individual program plan meeting, including  
25 the regional resource development project’s representative, shall  
26 be convened as soon as possible to review the emergency services  
27 and supports and determine the consumer’s ongoing needs for  
28 services and supports. The regional resource development project  
29 shall follow up with the regional center as to the success of the  
30 recommended interventions until the consumer’s living  
31 arrangement is stable.

32 (c) If the regional resource development project, in consultation  
33 with the regional center, the consumer, and the consumer’s parents,  
34 legal guardian, or conservator, when appropriate, determines that  
35 admittance to a state developmental center is necessary to prevent  
36 a substantial risk to the individual’s health and safety, the regional  
37 resource development project shall immediately facilitate that  
38 admission.

39 (d) The department shall collect data on the outcomes of efforts  
40 to assist at-risk consumers to remain in the community. The

1 department shall make aggregate data on the implementation of  
2 the requirements of this section available, upon request.

3 *(e) This section also applies to a situation in which a consumer,*  
4 *who is a current resident of a state developmental center, whose*  
5 *placement pursuant to Section 1370.1 of the Penal Code is due to*  
6 *end, and who is at risk of being placed in, or is at risk of continued*  
7 *placement in, a state developmental center through a petition filed*  
8 *pursuant to Section 6502.*

9 SEC. 4. Section 4418.8 is added to the Welfare and Institutions  
10 Code, to read:

11 4418.8. (a) By July 1, 2010, the department shall convene a  
12 task force to identify strategies and best practices for local  
13 interagency coordination and cooperation in addressing the needs  
14 of adults and juveniles with developmental disabilities in the  
15 criminal and juvenile justice systems. The task force shall include  
16 representation from regional centers, the judicial council, probation  
17 offices, public defenders, district attorneys, school districts, local  
18 law enforcement, county mental health, community service  
19 providers, regional center clients and their families, and disability  
20 and juvenile justice advocacy organizations. The task force, overall,  
21 shall include geographically diverse participation from both large  
22 and small counties. The task force may form separate  
23 subcommittees, focusing on adults and juveniles. The task force  
24 shall meet in a manner and as often as the department determines  
25 to be appropriate, consistent with the goals of the task force and  
26 the availability of funds.

27 (b) The task force shall address issues including, but not limited  
28 to, strategies and best practices related to the accomplishment of  
29 all of the following:

30 (1) Early identification and assessment of people with  
31 developmental disabilities in the criminal and juvenile justice  
32 process.

33 (2) Development of protocols and procedures for ongoing  
34 communication and cooperation between regional centers and  
35 other local agencies, including law enforcement and the courts.

36 (3) Training of jail and court personnel, including judges, public  
37 defenders, district attorneys, and probation officers, on issues  
38 related to people with developmental disabilities and available  
39 community resources.

1 (c) The task force shall also identify systemic barriers to serving  
2 people with developmental disabilities in community-based settings  
3 instead of jails and prisons, including licensing barriers and  
4 community resource and service needs, and recommendations for  
5 addressing identified systemic barriers.

6 (d) As appropriate, the task force shall develop model training  
7 curricula and model memoranda of understanding between regional  
8 centers and the courts and other local agencies.

9 (e) The task force shall issue interim reports to the Legislature  
10 on the progress of its work by July 1, 2011, and July 1, 2012. The  
11 task force shall complete its work and issue a final report to the  
12 Legislature by June 30, 2013. The final report shall include a  
13 description of best practices and strategies identified by the task  
14 force, any sample training curricula, materials, and memoranda of  
15 understanding developed by the task force, and recommendations  
16 for future action, including legislative recommendations related  
17 to adults and youth in the criminal and juvenile justice systems.

18 (f) This section shall become inoperative on July 1, 2013, and,  
19 as of January 1, 2014, is repealed, unless a later enacted statute,  
20 that becomes operative on or before January 1, 2014, deletes or  
21 extends the dates on which it becomes inoperative and is repealed.