

Assembly Bill No. 2370

Passed the Assembly August 31, 2012

Chief Clerk of the Assembly

Passed the Senate August 31, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 4502 and 17206.1 of the Business and Professions Code, to amend Section 1761 of the Civil Code, to amend Sections 8769, 16191, 16195, 16196, 16200, 41306, 41401, and 51765 of the Education Code, to amend Sections 854.2, 6514, 12428, 12926, 14670.1, 14670.2, 14670.3, 14670.5, 14672.1, 14672.92, 16813, 16814, and 16816 of the Government Code, to amend Sections 1275.5, 1337.1, 1337.3, 13113, 51312, 110403, 123935, 125000, 127260, and 129395 of the Health and Safety Code, to amend Sections 10118, 10124, and 10203.4 of the Insurance Code, to amend Sections 1001.20, 1346, 1370.1, 1376, and 2962 of the Penal Code, to amend Section 1420 of the Probate Code, to amend Section 25276 of the Vehicle Code, and to amend Sections 4417, 4426, 4512, 4801, 5002, 5008, 5325, 5585.25, 6250, 6505, 6513, 6551, 6715, 6717, 6740, 6741, 7275, 7351, and 11014 of, to amend the heading of Article 2 (commencing with Section 6500) of Chapter 2 of, to amend the heading of Article 4 (commencing with Section 6715) of Chapter 3 of, and to amend the heading of Article 4 (commencing with Section 6740) of Chapter 4 of, Part 2 of Division 6 of, the Welfare and Institutions Code, relating to intellectual disabilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2370, Mansoor. Mental retardation: change of term to intellectual disabilities.

Existing federal Medicaid provisions require a state to describe its Medicaid program in its state plan, which is required by federal law to provide for, among other things, a public process for determination of rates of payment under the plan for hospital services, nursing facility services, and services of intermediate care facilities for the mentally retarded.

Under existing law, various state statutes refer to mentally retarded persons in provisions relating to, among other things, services, commitment to state facilities, and criminal punishment.

This bill, which would be known as the Shriver "R-Word" Act, would revise various statutes to, instead, refer to a person with an intellectual disability. The bill would also state the intent of the

Legislature that the bill not be construed to change the coverage, eligibility, rights, responsibilities, or substantive definitions referred to in the amended provisions of the bill.

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

SECTION 1. This act shall be known, and may be cited, as the Shriver “R-Word” Act.

SEC. 2. Section 4502 of the Business and Professions Code is amended to read:

4502. As used in this chapter, “psychiatric technician” means any person who, for compensation or personal profit, implements procedures and techniques that involve understanding of cause and effect and that are used in the care, treatment, and rehabilitation of mentally ill or emotionally disturbed persons, or persons with intellectual disabilities, 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 these 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 these procedures and techniques is responsible to the director of the service in which his or her 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.

SEC. 3. Section 17206.1 of the Business and Professions Code is amended to read:

17206.1. (a) (1) In addition to any liability for a civil penalty pursuant to Section 17206, a person who violates this chapter, and the act or acts of unfair competition are perpetrated against one or more senior citizens or disabled persons, may be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which may be assessed and recovered in a civil action as prescribed in Section 17206.

(2) Subject to subdivision (d), any civil penalty shall be paid as prescribed by subdivisions (b) and (c) of Section 17206.

(b) As used in this section, the following terms have the following meanings:

(1) “Senior citizen” means a person who is 65 years of age or older.

(2) “Disabled person” means a person who has a physical or mental impairment that substantially limits one or more major life activities.

(A) As used in this subdivision, “physical or mental impairment” means any of the following:

(i) A physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(ii) A mental or psychological disorder, including intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

“Physical or mental impairment” includes, but is not limited to, diseases and conditions including orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, and emotional illness.

(B) “Major life activities” means functions that include caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) In determining whether to impose a civil penalty pursuant to subdivision (a) and the amount thereof, the court shall consider, in addition to any other appropriate factors, the extent to which one or more of the following factors are present:

(1) Whether the defendant knew or should have known that his or her conduct was directed to one or more senior citizens or disabled persons.

(2) Whether the defendant's conduct caused one or more senior citizens or disabled persons to suffer any of the following: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement, or for personal or family care and maintenance; or substantial loss of payments received under a pension or retirement plan or a government benefits program, or assets essential to the health or welfare of the senior citizen or disabled person.

(3) Whether one or more senior citizens or disabled persons are substantially more vulnerable than other members of the public to the defendant's conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(d) A court of competent jurisdiction hearing an action pursuant to this section may make orders and judgments as necessary to restore to a senior citizen or disabled person money or property, real or personal, that may have been acquired by means of a violation of this chapter. Restitution ordered pursuant to this subdivision shall be given priority over recovery of a civil penalty designated by the court as imposed pursuant to subdivision (a), but shall not be given priority over a civil penalty imposed pursuant to subdivision (a) of Section 17206. If the court determines that full restitution cannot be made to those senior citizens or disabled persons, either at the time of judgment or by a future date determined by the court, then restitution under this subdivision shall be made on a pro rata basis depending on the amount of loss.

SEC. 4. Section 1761 of the Civil Code is amended to read:

1761. As used in this title:

(a) "Goods" means tangible chattels bought or leased for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property, whether or not they are severable from the real property.

(b) “Services” means work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods.

(c) “Person” means an individual, partnership, corporation, limited liability company, association, or other group, however organized.

(d) “Consumer” means an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.

(e) “Transaction” means an agreement between a consumer and another person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement.

(f) “Senior citizen” means a person who is 65 years of age or older.

(g) “Disabled person” means a person who has a physical or mental impairment that substantially limits one or more major life activities.

(1) As used in this subdivision, “physical or mental impairment” means any of the following:

(A) A physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.

(B) A mental or psychological disorder, including intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. “Physical or mental impairment” includes, but is not limited to, diseases and conditions that include orthopedic, visual, speech, and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, and emotional illness.

(2) “Major life activities” means functions that include caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(h) “Home solicitation” means a transaction made at the consumer’s primary residence, except those transactions initiated by the consumer. A consumer response to an advertisement is not a home solicitation.

SEC. 5. Section 8769 of the Education Code is amended to read:

8769. The county superintendent of schools may, with the approval of the county board of education, lease real or personal property for the purpose of care, teaching, and training of physically handicapped children or children with intellectual disabilities if the property is not required for outdoor science education and conservation education, upon the terms and conditions that are agreed upon.

SEC. 6. Section 16191 of the Education Code is amended to read:

16191. As used in this article, “exceptional children” means physically handicapped pupils, pupils with intellectual disabilities, educationally handicapped pupils, multihandicapped pupils, or pupils enrolled in development centers for the handicapped required or allowed to be educated pursuant to Part 30 (commencing with Section 56000).

SEC. 7. Section 16195 of the Education Code is amended to read:

16195. Allocations under this article may be made in the amount as may be necessary, and in the manner as to distribute the available funds equitably among school districts, giving consideration to the needs of each district and the number of children within each district who are blind, partially seeing, aphasic, deaf, hard of hearing, orthopedically impaired, or have an intellectual disability, or who are health impaired, multihandicapped, speech handicapped, educationally handicapped, or enrolled in development centers for the handicapped.

In computing the number of those children, there shall be included all of the following:

- (a) The number of them residing in the district.
- (b) The number of handicapped minors who are actually living within the district five or more days a week, although their legal residence may be outside the district, and who are educated pursuant to former Section 56708, as enacted by Section 2 of Chapter 1010 of the Statutes of 1976.
- (c) The number of them who reside outside of the district, except those described in subdivision (b), and who are to be educated by the district, excluding minors with intellectual disabilities within former Section 56501, as amended by Section 58 of Chapter 1247

of the Statutes of 1977, who reside within a district having an average daily attendance of 900 or more and that does not meet the requirements of Section 16058 concerning outstanding bonded indebtedness.

Allocations for housing and equipment for minors having speech defects or disorders shall be allowed in new schools constructed after July 1, 1968, and in existing schools constructed between July 1, 1933, and July 1, 1968. The housing and equipment shall be designed and provided to permit their utilization for remedial and other special services including speech therapy, speech reading (lipreading), and auditory training for the speech and hearing handicapped, screening and testing for speech and hearing defects, or both, psychological testing of exceptional children, subject matter tutoring of exceptional children, and other specialized activities required by these children. In addition to the maximum building area allowances provided in Sections 16047, 16052, 16053, and 16054, not more than an additional 200 square feet of building area shall be allowed for each new school so planned and constructed.

Each existing school, constructed between July 1, 1933, and July 1, 1968, shall be allowed not more than an additional 200 square feet of building area only for construction thereon of a new speech facility. At the option of the applicant district, the board may allocate funds to convert existing facilities or to provide a combination of new construction and conversion of existing facilities to provide housing for minors having speech defects or disorders, provided the cost of the conversion or combination of new construction and conversion does not exceed the computed cost for 200 square feet of new classroom construction based upon cost standards adopted by the board. At the further option of the applicant district, and in lieu of new building construction or conversion, the board may allocate funds for the acquisition of mobile speech therapy facilities, provided the cost of the mobile facilities does not exceed the combined computed cost for 200 square feet of new classroom construction, based upon cost standards adopted by the board, at all schools that will be served by the mobile facility.

SEC. 8. Section 16196 of the Education Code is amended to read:

16196. Notwithstanding any provision of this article to the contrary, apportionments for the construction of facilities and the purchase of essential furniture and equipment for the education of exceptional children may, subject to the approval of the State Department of Education, be made to a school district not otherwise eligible to receive apportionments under Article 1 (commencing with Section 16000) and Article 2 (commencing with Section 16150) of this chapter, for the education of blind, partially seeing, aphasic, deaf, hard of hearing, orthopedically impaired or other health-impaired, multihandicapped, and educationally handicapped minors, minors with intellectual disabilities, pupils having speech defects or disorders, or pupils enrolled in development centers for the handicapped.

The State Department of Education may approve applications if the facilities will be used by a county superintendent of schools required to educate physically handicapped minors pursuant to former Section 1850, as enacted by Section 2 of Chapter 1010 of the Statutes of 1976, and minors with intellectual disabilities pursuant to former Section 1880, as enacted by Section 2 of Chapter 1010 of the Statutes of 1976. A school district may educate these minors by agreement with a county superintendent of schools required to educate these minors. Priority in the use of the facilities shall be given to pupils from districts other than the applicant district.

Except as otherwise provided in this section, not more than 50 percent of the amount of an apportionment made pursuant to this section shall be repaid. Repayments shall be made in the following manner: 50 percent of the amount of the apportionment shall be repaid in full with interest by the district, in the annual amounts and at the interest rate over the period as the State Allocation Board may determine, not to exceed 20 years from the date the apportionment became final. In a school year in which 50 percent or more of the pupils in average daily attendance, as determined by the county superintendent of schools, and served by the facilities are not pupils from districts other than the applicant district, the repayment for the succeeding fiscal year shall be an amount that would have been payable if the district had been required to repay 100 percent of the apportionment over that period.

The county board of supervisors of the county whose superintendent of schools conducts classes in the facility during

any fiscal year shall at that time or times within the fiscal year that may be agreed upon between the county and the school district, but in any case not later than the end of the fiscal year, pay to the school district having the obligation to repay the apportionment made under this section for the construction of the facility, an amount equal to 80 percent of the amount the district is required to repay in the fiscal year with respect to the apportionment described above.

The county board of supervisors shall raise the amount required through a general tax levy on the property within the participating districts, or through a tuition charge not to exceed one hundred sixty dollars (\$160) a year per pupil by the county superintendent of schools to the school districts of residence of pupils attending the facility other than the district having the obligation to repay, or through a combination of these.

The county superintendent of schools shall notify the county board of supervisors of his or her intention to approve a school district's application for an allocation under this article before he or she approves the application.

SEC. 9. Section 16200 of the Education Code is amended to read:

16200. Notwithstanding any provision of this article to the contrary, the board may make apportionments to school districts not otherwise eligible to receive apportionments under Article 1 (commencing with Section 16000) and Article 2 (commencing with Section 16150) for the construction of special education facilities and the purchase of essential furniture and equipment for the purpose of either or both of the following: (1) educating those physically handicapped and educationally handicapped pupils and pupils with intellectual disabilities who regularly reside in an established, licensed children's institution or family home and are being educated pursuant to former Section 42902, as amended by Section 1 of Chapter 1173 of the Statutes of 1977, and (2) educating handicapped pupils in development centers for handicapped pupils pursuant to former Article 1 (commencing with Section 56800) of Chapter 6 of Part 30, as enacted by Section 2 of Chapter 1010 of the Statutes of 1976.

Only 50 percent of any amounts allocated and disbursed to a district under this section shall be repaid by the district. Each disbursement shall be repaid in 20 equal annual installments,

including interest as determined by the board, and shall be computed and withheld by the Controller. The first computation of repayment of any disbursement shall be made in the fiscal year following the disbursement and shall during the next fiscal year be deducted in equal amounts from the February, March, April, and May installments of the apportionment made to the district from the State School Fund under Sections 41330 to 41343, inclusive, and Sections 41600 to 41972, inclusive.

SEC. 10. Section 41306 of the Education Code is amended to read:

41306. The Superintendent of Public Instruction shall also allow as otherwise provided in Section 41304 for the driver training instruction necessary to be safely tested for a driver's license at the Department of Motor Vehicles, those physically handicapped pupils, pupils with intellectual disabilities who come within the provisions of former Section 56501, as amended by Chapter 1247 of the Statutes of 1977, and educationally handicapped pupils who are in attendance in a public secondary school in California that offers qualified instruction, and who may qualify for a driver's license, or other license, issued by the Department of Motor Vehicles, a total allowance not to exceed two hundred ninety dollars (\$290) including the reimbursement provisions set forth in Section 41900 to each school district and county superintendent of schools. All driver training for pupils herein described shall be provided by qualified teachers, as defined by Sections 41906 and 41907. This section may not be applied if reimbursement allowable under Sections 41900 to 41912, inclusive, is sufficient to meet the total cost of instruction as herein described.

It is the intent of the Legislature that driver training instruction be provided to pupils as a part of the high school curriculum, and the Legislature finds and declares that exceptional children are entitled to the benefit of that instruction so far as their individual capabilities permit, understanding that those pupils herein described often require individualized and amplified driver training instruction in order to succeed in becoming safe operators of motor vehicles. Since without a means of self-transportation much of the overall program of education and rehabilitation provided for by the Legislature would be of little avail to the person without the mobility required to become a productive and well-adjusted member of society, the Legislature further declares that it is

incumbent upon the state to share in the cost of providing a most needed and desirable program of driver training instruction for these exceptional children.

SEC. 11. Section 41401 of the Education Code is amended to read:

41401. For the purposes of this article:

(a) “Administrative employee” means an employee of a school district, employed in a position requiring certification qualifications, who does not come within the definition set forth in subdivision (c) or (d).

(b) “Classified employee” means an employee of a school district, employed in a position not requiring certification qualifications.

(c) “Pupil services employee” means an employee of a school district, employed in a position requiring a standard designated services credential, health and development credential, or a librarian credential, who performs direct services to pupils. “Pupil services employee” includes, but is not limited to, in-school librarians, school nurses, assistant in-school librarians, audiovisual personnel, counselors, psychologists, psychometrists, guidance and welfare personnel, attendance personnel, school social workers, and all other certificated personnel performing pupil-personnel, health, or librarian services.

(d) “Teacher” means an employee of a school district, employed in a position requiring certification qualifications, whose duties require him or her to provide direct instruction to pupils in the schools of that district for the full time for which he or she is employed. “Teacher” includes, but is not limited to, teachers of special classes, teachers of exceptional children, teachers of pupils with physical disabilities, teachers of minors with intellectual disabilities, substitute teachers, instructional television teachers, specialist mathematics teachers, specialist reading teachers, home and hospital teachers, and learning disability group teachers. Instructional preparation time shall be counted as part of the teacher full-time equivalent, including, but not limited to, mentor teacher or department chairperson time.

SEC. 12. Section 51765 of the Education Code is amended to read:

51765. The governing board of a school district that establishes and supervises a work experience education program in which

pupils with intellectual disabilities are employed in part-time jobs may use funds derived from any source, to the extent permissible by appropriate law or regulation, to pay the wages of pupils so employed.

The Legislature hereby finds and declares that the authority granted by this section is necessary to ensure that the work experience education program will continue to provide maximum educational benefit to students, particularly pupils with intellectual disabilities, and that the program is deemed to serve a public purpose.

SEC. 13. Section 854.2 of the Government Code is amended to read:

854.2. As used in this chapter, “mental institution” means a state hospital for the care and treatment of the mentally disordered or persons with intellectual disabilities, the California Rehabilitation Center referred to in Section 3300 of the Welfare and Institutions Code, or a county psychiatric hospital.

SEC. 14. Section 6514 of the Government Code is amended to read:

6514. A state department or agency concerned with the provisions of services or facilities to persons with intellectual disabilities and their families may enter into agreements under this chapter.

SEC. 15. Section 12428 of the Government Code is amended to read:

12428. In the event either the Governor or the Legislature should obtain federal approval to transfer programs receiving federal support for persons who have an intellectual disability or mental disorder from one state department to another state department under the provisions of Public Law 90-577 (Intergovernmental Cooperation Act of 1968), the Controller shall, upon approval of the Director of Finance, transfer to a department designated by the Governor the parts of the appropriation of the other departments that are related to programs for persons who have an intellectual disability or mental disorder, provided further, that the transfer shall enable the state to make maximum utilization of available state and federal funds.

SEC. 16. Section 12926 of the Government Code is amended to read:

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) “Affirmative relief” or “prospective relief” includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) “Age” refers to the chronological age of an individual who has reached his or her 40th birthday.

(c) “Employee” does not include an individual employed by his or her parents, spouse, or child, or an individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) “Employer” includes a person regularly employing five or more persons, or a person acting as an agent of an employer, directly or indirectly, the state or a political or civil subdivision of the state, and cities, except as follows:

“Employer” does not include a religious association or corporation not organized for private profit.

(e) “Employment agency” includes a person undertaking for compensation to procure employees or opportunities to work.

(f) “Essential functions” means the fundamental job duties of the employment position the individual with a disability holds or desires. “Essential functions” does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

- (A) The employer’s judgment as to which functions are essential.
- (B) Written job descriptions prepared before advertising or interviewing applicants for the job.
- (C) The amount of time spent on the job performing the function.
- (D) The consequences of not requiring the incumbent to perform the function.

- (E) The terms of a collective bargaining agreement.
- (F) The work experiences of past incumbents in the job.
- (G) The current work experience of incumbents in similar jobs.

(g) (1) “Genetic information” means, with respect to an individual, information about any of the following:

- (A) The individual’s genetic tests.
- (B) The genetic tests of family members of the individual.
- (C) The manifestation of a disease or disorder in family members of the individual.

(2) “Genetic information” includes a request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or a family member of the individual.

(3) “Genetic information” does not include information about the sex or age of an individual.

(h) “Labor organization” includes an organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(i) “Medical condition” means either of the following:

(1) A health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.

(2) Genetic characteristics. For purposes of this section, “genetic characteristics” means either of the following:

(A) A scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of a disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of a disease or disorder.

(j) “Mental disability” includes, but is not limited to, all of the following:

(1) Having a mental or psychological disorder or condition, including an intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

(A) “Limits” shall be determined without regard to mitigating measures, including medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

(C) “Major life activities” shall be broadly construed and shall include physical, mental, and social activities and working.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

“Mental disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(k) “On the bases enumerated in this part” means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, or sexual orientation.

(l) “Physical disability” includes, but is not limited to, all of the following:

(1) Having a physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) “Limits” shall be determined without regard to mitigating measures, including medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) “Major life activities” shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) “Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or

psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(m) Notwithstanding subdivisions (j) and (l), if the definition of “disability” used in the federal Americans with Disabilities Act of 1990 (P.L. 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (j) or (l), or would include a medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (j) and (l).

(n) “Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, or sexual orientation” includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(o) “Reasonable accommodation” may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials, or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(p) “Religious creed,” “religion,” “religious observance,” “religious belief,” and “creed” include all aspects of religious belief, observance, and practice.

(q) “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. “Sex” also includes, but is not limited to, a person’s gender. “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

(r) “Sexual orientation” means heterosexuality, homosexuality, and bisexuality.

(s) “Supervisor” means an individual having the authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(t) “Undue hardship” means an action requiring significant difficulty or expense, when considered in light of the following factors:

(1) The nature and cost of the accommodation needed.

(2) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.

(3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities.

(4) The type of operations, including the composition, structure, and functions of the workforce of the entity.

(5) The geographic separateness, administrative, or fiscal relationship of the facility or facilities.

SEC. 17. Section 14670.1 of the Government Code is amended to read:

14670.1. Notwithstanding Section 14670, the Director of General Services, with the consent of the State Department of State Hospitals, may let to a nonprofit corporation, for the purpose of conducting an educational and work program for persons with intellectual disabilities, and for a period not to exceed 50 years, real property not exceeding 10 acres located within the grounds of the Napa State Hospital.

The lease authorized by this section shall be nonassignable and shall be subject to periodic review every five years. The review shall be made by the Director of General Services, who shall do both of the following:

(a) Assure the state that the original purposes of the lease are being carried out.

(b) Determine what, if any, adjustment should be made in the terms of the lease.

The lease shall also provide for an initial capital outlay by the lessee of thirty thousand dollars (\$30,000) prior to January 1, 1976. The capital outlay may be, or may have been, contributed before or after the effective date of the act adding this section.

SEC. 18. Section 14670.2 of the Government Code, as amended by Section 1 of Chapter 65 of the Statutes of 1992, is amended to read:

14670.2. Notwithstanding Section 14670, the Director of General Services, with the consent of the State Department of State Hospitals, may, in the best interests of the state, let to a public governmental agency, for the purpose of locating and conducting its training program for people with intellectual disabilities, and for locating and conducting a child care facility, and for a period not to exceed 50 years, real property not exceeding 10 acres located within the grounds of the Napa State Hospital. For the additional purpose of establishing an educational park, the director may, with the consent of the department, renegotiate the lease, for a period not to exceed 50 years, which period shall commence January 1, 1993. For the purposes of this section, "educational park" means a conglomerate of educational services, including, but not limited to, a children's center, a preschool for severely disabled children, adult educational services, administrative offices, a community school, and a media services building.

The lease authorized by this section shall be nonassignable and shall be subject to periodic review every five years. That review shall be made by the Director of General Services, who shall do both of the following:

(a) Assure the state the purposes of the lease are being carried out.

(b) Determine what, if any, adjustment should be made in the terms of the lease.

The lease shall also provide for the establishment of a school building facility by the lessee prior to July 1, 1977. That facility shall not be established until after the effective date of the act amending this section.

SEC. 19. Section 14670.3 of the Government Code is amended to read:

14670.3. Notwithstanding Section 14670, the Director of General Services, with the consent of the State Department of Mental Health, may let to a nonprofit corporation, for the purpose of conducting an educational and work program for persons with intellectual disabilities, and for a period not to exceed 55 years, real property not exceeding five acres located within the grounds of the Fairview State Hospital.

The lease authorized by this section shall be nonassignable and shall be subject to periodic review every five years. The review shall be made by the Director of General Services, who shall do both of the following:

- (a) Assure the state that the original purposes of the lease are being carried out.
- (b) Determine what, if any, adjustment should be made in the terms of the lease.

The lease shall also provide for an initial capital outlay by the lessee of thirty thousand dollars (\$30,000) prior to January 1, 1976. The capital outlay may be, or may have been, contributed before or after the effective date of the act adding this section.

SEC. 20. Section 14670.5 of the Government Code is amended to read:

14670.5. Notwithstanding Section 14670, the Director of General Services, with the consent of the State Department of Mental Health may let to a nonprofit corporation, for the purpose of establishing and maintaining a rehabilitation center for persons with intellectual disabilities, for a period not exceeding 20 years, real property, not exceeding five acres, located within the grounds of the Fairview State Hospital in Orange County, and that is retained by the state primarily to provide a peripheral buffer area, or zone, between real property that the state hospital is located on and adjacent real property, if the director deems the letting is in the best interests of the state.

SEC. 21. Section 14672.1 of the Government Code is amended to read:

14672.1. Notwithstanding Section 14670, the Director of General Services, with the consent of the Department of Corrections and Rehabilitation, may let to a nonprofit corporation, for the purpose of conducting an educational and work program for persons with intellectual disabilities, and for a period not to

exceed 50 years, real property not exceeding 10 acres, located within the grounds of the Medical Facility at Vacaville, California.

A lease executed pursuant to this section shall include a provision that the lease shall be canceled if permanent facilities are not constructed on the leased land within five years after the effective date of the amendments to this section enacted at the 1967 Regular Session of the Legislature.

A lease executed pursuant to this section may be assigned or sublet in whole or in part by the lessee nonprofit corporation to any public agency with the approval of the Director of General Services and the Department of Corrections and Rehabilitation.

SEC. 22. Section 14672.92 of the Government Code is amended to read:

14672.92. Notwithstanding Section 14670, the Director of General Services, with the consent of the State Department of Developmental Services, may let to a nonprofit corporation, for the purpose of conducting an educational and work program for persons with intellectual disabilities, and for a period not to exceed 50 years, real property not exceeding 18.50 acres located within the grounds of the Camarillo State Hospital at 1732 Lewis Road in the City of Camarillo.

The lease authorized by this section shall be nonassignable and shall be subject to periodic review every five years. The review shall be made by the Director of General Services and the Director of Developmental Services who shall do all of the following:

(a) Assure the state the original purposes of the lease are being carried out.

(b) Determine what, if any, adjustment should be made in the terms of the lease.

SEC. 23. Section 16813 of the Government Code is amended to read:

16813. Bonds of the State of California shall be prepared, issued, and sold in the amount of one hundred million dollars (\$100,000,000), in such denominations, to be numbered, to bear such dates, and to bear such rate of interest as shall be determined by the Legislature.

The proceeds of such bonds shall be used:

(a) Subject to such legislation as the Legislature may, from time to time, enact, to provide loans and grants to school districts of the state for use in purchasing and improving school sites, the

purchasing of furniture and equipment for schools, and the planning and constructing, reconstructing, repairing, altering, and making additions to, school buildings.

(b) Subject to such legislation as the Legislature may, from time to time, enact, to provide loans and grants to school districts for assistance in providing necessary housing and equipment for the education of individuals who have exceptional needs, as that term is defined in Section 56026 of the Education Code.

(c) To pay the expenses that may be incurred in preparing, advertising, issuing, and selling the bonds, and in administering and directing the expenditure of the moneys realized from the sale of such bonds.

The issuance, signing, countersigning, endorsing, and selling of the bonds herein provided for, and the interest coupons thereon, the place and method of payment of principal and interest thereon, the procedure for initiating, advertising, and holding sales thereof, and the performance by the several state boards and state officers of their respective duties in connection therewith; and all other provisions, terms, and conditions relating to the bonds, shall be as provided by the Legislature.

The Legislature may appropriate money to be expended in addition to or in lieu of the money received from the sale of the bonds sold under the authority of this section. The money so appropriated shall be expended pursuant to subdivision (a) of this section. If the Legislature appropriates money in lieu of the money received from the sale of the bonds, the total amount of bonds required to be sold pursuant to this section shall be reduced by the amount so appropriated.

The Legislature shall pass all laws, general or special, necessary or convenient to carry into effect the provisions of this section. Such laws may provide for the allocation of funds to school districts pursuant to this section by the State Allocation Board or a similar agency and in that event, notwithstanding any other provision of this Constitution, Members of the Legislature who are required to meet with such board shall have equal rights and duties with the nonlegislative members to vote and act upon matters pending before such board.

The Legislature shall require each district receiving an allocation of money from the sale of bonds pursuant to this section for the purposes prescribed in subdivision (a) of this section to repay such

money to the state on such terms and in such amounts as may be within the ability of the district to repay.

The Legislature may require each district receiving an allocation of money from the sale of bonds pursuant to this section for the purposes prescribed in subdivision (b) of this section to repay such money to the state on such terms and in such amounts as the Legislature deems proper.

The people of the State of California in adopting this section hereby declare that it is in the interests of the state and of the people thereof for the state to aid school districts of the state in providing necessary school sites and buildings for the pupils of the public school system, such system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.

SEC. 24. Section 16814 of the Government Code is amended to read:

16814. Bonds of the State of California shall be prepared, issued, and sold in the amount of two hundred twenty million dollars (\$220,000,000), in such denominations, to be numbered, to bear such dates, and to bear such rate of interest as shall be determined by the Legislature.

The proceeds of such bonds shall be used:

(a) Subject to such legislation as the Legislature may, from time to time, enact, to provide loans and grants to school districts of the state for use in purchasing and improving school sites, the purchasing of furniture and equipment for schools, and the planning and constructing, reconstructing, repairing, altering, and making additions to, school buildings.

(b) Subject to such legislation as the Legislature may, from time to time, enact, to provide loans and grants to school districts for assistance in providing necessary housing and equipment for the education of individuals who have exceptional needs, as that term is defined in Section 56026 of the Education Code.

(c) To pay the expenses that may be incurred in preparing, advertising, issuing, and selling the bonds, and in administering and directing the expenditure of the moneys realized from the sale of such bonds.

(d) To repay, as provided by law, any money appropriated from the Investment Fund at the 1958 First Extraordinary Session for state school building aid.

The issuance, signing, countersigning, endorsing, and selling of the bonds herein provided for, and the interest coupons thereon, the place and method of payment of principal and interest thereon, the procedure for initiating, advertising, and holding sales thereof, and the performance by the several state boards and state officers of their respective duties in connection therewith; and all other provisions, terms, and conditions relating to the bonds, shall be as provided by the Legislature.

The Legislature may appropriate money to be expended in addition to or in lieu of the money received from the sale of the bonds sold under the authority of this section. The money so appropriated shall be expended pursuant to subdivision (a) of this section. If the Legislature appropriates money in lieu of the money received from the sale of the bonds, the total amount of bonds required to be sold pursuant to this section shall be reduced by the amount so appropriated.

The Legislature shall pass all laws, general or special, necessary or convenient to carry into effect the provisions of this section. Such laws may provide for the allocation of funds to school districts pursuant to this section by the State Allocation Board or a similar agency and in that event, notwithstanding any other provision of this Constitution, Members of the Legislature who are required to meet with such board shall have equal rights and duties with the nonlegislative members to vote and act upon matters pending before such board.

The Legislature shall require each district receiving an allocation of money from the sale of bonds pursuant to this section for the purposes prescribed in subdivision (a) of this section to repay such money to the state on such terms and in such amounts as may be within the ability of the district to repay.

The Legislature may require each district receiving an allocation of money from the sale of bonds pursuant to this section for the purposes prescribed in subdivision (b) of this section to repay such money to the state on such terms and in such amounts as the Legislature deems proper.

The people of the State of California in adopting this section hereby declare that it is in the interests of the state and of the people thereof for the state to aid school districts of the state in providing necessary school sites and buildings for the pupils of the public school system, such system being a matter of general concern

inasmuch as the education of the children of the state is an obligation and function of the state.

SEC. 25. Section 16816 of the Government Code is amended to read:

16816. Bonds of the State of California shall be prepared, issued, and sold in the amount of three hundred million dollars (\$300,000,000), in such denominations, to be numbered, to bear such dates, and to bear such rate of interest as shall be determined by the Legislature.

The proceeds of such bonds shall be used:

(a) Subject to such legislation as the Legislature may, from time to time, enact, to provide loans and grants to school districts of the state for use in purchasing and improving school sites, the purchasing of furniture and equipment for schools, and the planning and constructing, reconstructing, repairing, altering, and making additions to, school buildings.

(b) Subject to such legislation as the Legislature may, from time to time, enact, to provide loans and grants to school districts for assistance in providing necessary housing and equipment for the education of individuals who have exceptional needs, as that term is defined in Section 56026 of the Education Code.

(c) To pay the expenses that may be incurred in preparing, advertising, issuing, and selling the bonds, and in administering and directing the expenditure of the moneys realized from the sale of such bonds.

(d) To repay, as provided by law, any money appropriated from the General Fund at the 1960 First Extraordinary Session for state school building aid.

The issuance, signing, countersigning, endorsing, and selling of the bonds herein provided for, and the interest coupons thereon, the place and method of payment of principal and interest thereon, the procedure for initiating, advertising, and holding sales thereof, and the performance by the several state boards and state officers of their respective duties in connection therewith; and all other provisions, terms, and conditions relating to the bonds, shall be as provided by the Legislature.

The Legislature may appropriate money to be expended in addition to or in lieu of the money received from the sale of the bonds sold under the authority of this section. The money so appropriated shall be expended pursuant to subdivision (a) of this

section. If the Legislature appropriates money in lieu of the money received from the sale of the bonds, the total amount of bonds required to be sold pursuant to this section shall be reduced by the amount so appropriated.

The Legislature shall pass all laws, general or special, necessary or convenient to carry into effect the provisions of this section. Such laws may provide for the allocation of funds to school districts pursuant to this section by the State Allocation Board or a similar agency. Notwithstanding any other provision of this Constitution, Members of the Legislature who are required to meet with such board shall have equal rights and duties with the nonlegislative members to vote and act upon matters pending before such board concerning this section or any other section of the Constitution or legislative act authorizing the allocation of funds to school districts for purposes the same or substantially the same as those enumerated in this section.

The Legislature shall require each district receiving an allocation of money from the sale of bonds pursuant to this section for the purposes prescribed in subdivision (a) of this section to repay such money to the state on such terms and in such amounts as may be within the ability of the district to repay.

The Legislature may require each district receiving an allocation of money from the sale of bonds pursuant to this section for the purposes prescribed in subdivision (b) of this section to repay such money to the state on such terms and in such amounts as the Legislature deems proper.

The people of the State of California in adopting this section hereby declare that it is in the interests of the state and of the people thereof for the state to aid school districts of the state in providing necessary school sites and buildings for the pupils of the public school system, such system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.

SEC. 26. Section 1275.5 of the Health and Safety Code is amended to read:

1275.5. (a) The regulations relating to the licensing of hospitals, previously adopted by the State Department of Public Health pursuant to Chapter 2 (commencing with Section 1250) of Division 2, and in effect immediately prior to July 1, 1973, shall remain in effect and shall be fully enforceable with respect to a

hospital required to be licensed by this chapter, unless and until the regulations are readopted, amended, or repealed by the director.

(b) The regulations relating to private institutions receiving or caring for any mentally disordered persons, persons with intellectual disabilities, and other incompetent persons, previously adopted by the Department of Mental Hygiene pursuant to Chapter 1 (commencing with Section 7000) of Division 7 of the Welfare and Institutions Code, and in effect immediately prior to July 1, 1973, shall remain in effect and shall be fully enforceable with respect to any facility, establishment, or institution for the reception and care of mentally disordered persons, persons with intellectual disabilities, and other incompetent persons, required to be licensed by the provisions of this chapter, unless and until the regulations are readopted, amended, or repealed by the director.

(c) (1) All regulations relating to the licensing of psychiatric health facilities previously adopted by the State Department of Health Services, pursuant to authority now vested in the State Department of Mental Health by Section 4080 of the Welfare and Institutions Code, and in effect immediately preceding September 20, 1988, shall remain in effect and shall be fully enforceable by the State Department of Mental Health with respect to a facility or program required to be licensed as a psychiatric health facility, unless and until the regulations readopted, amended, or repealed by the Director of Mental Health.

(2) The State Department of Social Services shall succeed to and be vested with all duties, powers, purposes, functions, responsibilities, and jurisdiction of the State Department of Mental Health, described in paragraph (1), as they relate to licensing psychiatric health facilities.

SEC. 27. Section 1337.1 of the Health and Safety Code is amended to read:

1337.1. A skilled nursing or intermediate care facility shall adopt an approved training program that meets standards established by the state department. The approved training program shall consist of at least the following:

(a) An orientation program to be given to newly employed nurse assistants prior to providing direct patient care in skilled nursing or intermediate care facilities.

(b) (1) A precertification training program consisting of at least 60 classroom hours of training on basic nursing skills, patient

safety and rights, the social and psychological problems of patients, and resident abuse prevention, recognition, and reporting pursuant to subdivision (e). The 60 classroom hours of training may be conducted within a skilled nursing or intermediate care facility or in an educational institution.

(2) In addition to the 60 classroom hours of training required under paragraph (1), the precertification training program shall consist of at least 100 hours of supervised and on-the-job training clinical practice. The 100 hours may consist of normal employment as a nurse assistant under the supervision of either the director of nurse training or a licensed nurse qualified to provide nurse assistant training who has no other assigned duties while providing the training.

(3) At least two hours of the 60 hours of classroom training and at least four hours of the 100 hours of the supervised clinical training shall address the special needs of persons with developmental and mental disorders, including intellectual disability, Alzheimer's disease, cerebral palsy, epilepsy, dementia, Parkinson's disease, and mental illness.

(4) In a precertification training program subject to this subdivision, credit shall be given for the training received in an approved precertification training program adopted by another skilled nursing or intermediate care facility.

(5) This subdivision shall not apply to a skilled nursing or intermediate care facility that demonstrates to the state department that it employs only nurse assistants with a valid certification.

(c) Continuing in-service training to assure continuing competency in existing and new nursing skills.

(d) Each facility shall consider including training regarding the characteristics and method of assessment and treatment of acquired immunodeficiency syndrome (AIDS).

(e) (1) The approved training program shall include, within the 60 hours of classroom training, a minimum of six hours of instruction on preventing, recognizing, and reporting instances of resident abuse utilizing those courses developed pursuant to Section 13823.93 of the Penal Code, and a minimum of one hour of instruction on preventing, recognizing, and reporting residents' rights violations.

(2) A minimum of four hours of instruction on preventing, recognizing, and reporting instances of resident abuse, including

instruction on preventing, recognizing, and reporting residents' rights violations, shall be included within the total minimum hours of continuing education or in-service training required and in effect for certified nursing assistants.

SEC. 28. Section 1337.3 of the Health and Safety Code is amended to read:

1337.3. (a) The department shall prepare and maintain a list of approved training programs for nurse assistant certification. The list shall include training programs conducted by skilled nursing or intermediate care facilities, as well as local agencies and education programs. In addition, the list shall include information on whether a training center is currently training nurse assistants, their competency test pass rates, and the number of nurse assistants they have trained. Clinical portions of the training programs may be obtained as on-the-job training, supervised by a qualified director of staff development or licensed nurse.

(b) It shall be the duty of the department to inspect a representative sample of training programs. The department shall protect consumers and students in any training program against fraud, misrepresentation, or other practices that may result in improper or excessive payment of funds paid for training programs. In evaluating a training center's training program, the department shall examine each training center's trainees' competency test passage rate, and require each program to maintain an average 60 percent test score passage rate to maintain its participation in the program. The average test score passage rate shall be calculated over a two-year period. If the department determines that a training program is not complying with regulations or is not meeting the competency passage rate requirements, notice thereof in writing shall be immediately given to the program. If the program has not been brought into compliance within a reasonable time, the program may be removed from the approved list and notice thereof in writing given to it. Programs removed under this article shall be afforded an opportunity to request reinstatement of program approval at any time. The department's district offices shall inspect facility-based centers as part of their annual survey.

(c) Notwithstanding Section 1337.1, the approved training program shall consist of at least the following:

(1) A 16-hour orientation program to be given to newly employed nurse assistants prior to providing direct patient care,

and consistent with federal training requirements for facilities participating in the Medicare or Medicaid programs.

(2) (A) A certification training program consisting of at least 60 classroom hours of training on basic nursing skills, patient safety and rights, the social and psychological problems of patients, and elder abuse recognition and reporting pursuant to subdivision (e) of Section 1337.1. The 60 classroom hours of training may be conducted within a skilled nursing facility, an intermediate care facility, or an educational institution.

(B) In addition to the 60 classroom hours of training required under subparagraph (A), the certification program shall also consist of 100 hours of supervised and on-the-job training clinical practice. The 100 hours may consist of normal employment as a nurse assistant under the supervision of either the director of staff development or a licensed nurse qualified to provide nurse assistant training who has no other assigned duties while providing the training.

(3) At least two hours of the 60 hours of classroom training and at least four hours of the 100 hours of the supervised clinical training shall address the special needs of persons with developmental and mental disorders, including intellectual disability, Alzheimer's disease, cerebral palsy, epilepsy, dementia, Parkinson's disease, and mental illness.

(d) The department, in consultation with the State Department of Education and other appropriate organizations, shall develop criteria for approving training programs, that includes program content for orientation, training, inservice and the examination for testing knowledge and skills related to basic patient care services and shall develop a plan that identifies and encourages career ladder opportunities for certified nurse assistants. This group shall also recommend, and the department shall adopt, regulation changes necessary to provide for patient care when facilities utilize noncertified nurse assistants who are performing direct patient care. The requirements of this subdivision shall be established by January 1, 1989.

(e) On or before January 1, 2004, the department, in consultation with the State Department of Education, the American Red Cross, and other appropriate organizations, shall do the following:

(1) Review the current examination for approved training programs for certified nurse assistants to ensure the accurate

assessment of whether a nurse assistant has obtained the required knowledge and skills related to basic patient care services.

(2) Develop a plan that identifies and encourages career ladder opportunities for certified nurse assistants, including the application of on-the-job postcertification hours to educational credits.

(f) A skilled nursing or intermediate care facility shall determine the number of specific clinical hours within each module identified by the department required to meet the requirements of subdivision (d), subject to subdivisions (b) and (c). The facility shall consider the specific hours recommended by the department when adopting the certification training program required by this chapter.

(g) This article shall not apply to a program conducted by any church or denomination for the purpose of training the adherents of the church or denomination in the care of the sick in accordance with its religious tenets.

(h) The Chancellor of the California Community Colleges shall provide to the department a standard process for approval of college credit. The department shall make this information available to all training programs in the state.

SEC. 29. Section 13113 of the Health and Safety Code is amended to read:

13113. (a) Except as otherwise provided in this section, a person, firm, or corporation shall not establish, maintain, or operate a hospital, children's home, children's nursery, or institution, home or institution for the care of aged or senile persons, sanitarium or institution for insane persons or persons with intellectual disabilities, or nursing or convalescent home, wherein more than six guests or patients are housed or cared for on a 24-hour-per-day basis unless there is installed and maintained in an operable condition in every building, or portion thereof where patients or guests are housed, an automatic sprinkler system approved by the State Fire Marshal.

(b) This section does not apply to homes or institutions for the 24-hour-per-day care of ambulatory children if all of the following conditions are satisfied:

(1) The buildings, or portions thereof where children are housed, are not more than two stories in height and are constructed and maintained in accordance with regulations adopted by the State Fire Marshal pursuant to Section 13143 and building standards published in the California Building Standards Code.

(2) The buildings, or portions thereof housing more than six children, shall have installed and maintained in an operable condition therein a fire alarm system of a type approved by the State Fire Marshal. The system shall be activated by detectors responding to invisible products of combustion other than heat.

(3) The buildings or portions thereof do not house mentally ill children or children with intellectual disabilities.

(c) This section does not apply to any one-story building or structure of an institution or home for the care of the aged providing 24-hour-per-day care if the building or structure is used or intended to be used for the housing of no more than six ambulatory aged persons. However, the buildings or institutions shall have installed and maintained in an operable condition therein a fire alarm system of a type approved by the State Fire Marshal. The system shall be activated by detectors responding to products of combustion other than heat.

(d) This section does not apply to occupancies, or any alterations thereto, located in type I construction, as defined by the State Fire Marshal, under construction or in existence on March 4, 1972.

(e) “Under construction,” as used in this section, means that actual work shall have been performed on the construction site and shall not be construed to mean that the hospital, home, nursery, institution, sanitarium, or a portion thereof, is in the planning stage.

SEC. 30. Section 51312 of the Health and Safety Code is amended to read:

51312. (a) The primary purpose of this chapter is to provide an additional method of financing special needs housing.

(b) (1) For purposes of this chapter, “special needs housing” means any housing, including supportive housing, intended to benefit, in whole or in part, persons identified as having special needs relating to any of the following:

(A) Mental health.

(B) Physical disabilities.

(C) Developmental disabilities, including, but not limited to, intellectual disability, cerebral palsy, epilepsy, and autism.

(D) The risk of homelessness.

(2) Special needs housing shall also mean housing intended to meet the housing needs of persons eligible for mental health services funded in whole or in part by the Mental Health Services

Fund, created by Section 5890 of the Welfare and Institutions Code.

SEC. 31. Section 110403 of the Health and Safety Code is amended to read:

110403. Except as otherwise provided in Section 110405, it is unlawful for a person to advertise a drug or device represented to have an effect in any of the following conditions, disorders, or diseases:

- (a) Appendicitis.
- (b) Blood disorders.
- (c) Bone or joint diseases.
- (d) Kidney diseases or disorders.
- (e) Cancer.
- (f) Carbuncles.
- (g) Diseases, disorders, or conditions of the eye.
- (h) Diabetes.
- (i) Diphtheria.
- (j) Gallbladder diseases or disorders.
- (k) Heart and vascular diseases.
- (l) High blood pressure.
- (m) Diseases or disorders of the ear or auditory apparatus, including hearing loss and deafness.
- (n) Measles.
- (o) Meningitis.
- (p) Mental disease or intellectual disability.
- (q) Paralysis.
- (r) Pneumonia.
- (s) Poliomyelitis.
- (t) Prostate gland disorders.
- (u) Conditions of the scalp, affecting hair loss, or baldness.
- (v) Alcoholism.
- (w) Periodontal diseases.
- (x) Epilepsy.
- (y) Goiter.
- (z) Endocrine disorders.
- (aa) Sexual impotence.
- (ab) Sinus infections.
- (ac) Encephalitis.
- (ad) Tumors.
- (ae) Venereal diseases.

- (af) Tuberculosis.
- (ag) Ulcers of the stomach.
- (ah) Varicose ulcers.
- (ai) Scarlet fever.
- (aj) Typhoid fever.
- (ak) Whooping cough.
- (al) Acquired immunodeficiency syndrome (AIDS).
- (am) AIDS-related complex (ARC).
- (an) Diseases, disorders, or conditions of the immune system.

SEC. 32. Section 123935 of the Health and Safety Code is amended to read:

123935. A handicapped child shall not be denied services pursuant to this article because he or she has an intellectual disability.

SEC. 33. Section 125000 of the Health and Safety Code is amended to read:

125000. (a) It is the policy of the State of California to make every effort to detect, as early as possible, phenylketonuria and other preventable heritable or congenital disorders leading to intellectual disability or physical defects.

The department shall establish a genetic disease unit, that shall coordinate all programs of the department in the area of genetic disease. The unit shall promote a statewide program of information, testing, and counseling services and shall have the responsibility of designating tests and regulations to be used in executing this program.

The information, tests, and counseling for children shall be in accordance with accepted medical practices and shall be administered to each child born in California once the department has established appropriate regulations and testing methods. The information, tests, and counseling for pregnant women shall be in accordance with accepted medical practices and shall be offered to each pregnant woman in California once the department has established appropriate regulations and testing methods. These regulations shall follow the standards and principles specified in Section 124980. The department may provide laboratory testing facilities or contract with any laboratory that it deems qualified to conduct tests required under this section. However, notwithstanding former Section 125005, provision of laboratory testing facilities by the department shall be contingent upon the provision of funding

therefor by specific appropriation to the Genetic Disease Testing Fund enacted by the Legislature. If moneys appropriated for purposes of this section are not authorized for expenditure to provide laboratory facilities, the department may nevertheless contract to provide laboratory testing services pursuant to this section and shall perform laboratory services, including, but not limited to, quality control, confirmatory, and emergency testing, necessary to ensure the objectives of this program.

(b) The department shall charge a fee for any tests performed pursuant to this section. The amount of the fee shall be established and periodically adjusted by the director in order to meet the costs of this section.

(c) The department shall inform all hospitals or physicians and surgeons, or both, of required regulations and tests and may alter or withdraw any of these requirements whenever sound medical practice so indicates. To the extent practicable, the department shall provide notice to hospitals and other payers in advance of an increase in the fees charged for the program.

(d) This section shall not apply if a parent or guardian of the newborn child objects to a test on the ground that the test conflicts with his or her religious beliefs or practices.

(e) The genetic disease unit is authorized to make grants or contracts or payments to vendors approved by the department for all of the following:

- (1) Testing and counseling services.
- (2) Demonstration projects to determine the desirability and feasibility of additional tests or new genetic services.
- (3) To initiate the development of genetic services in areas of need.
- (4) To purchase or provide genetic services from any sums as are appropriated for this purpose.

(f) The genetic disease unit shall evaluate and prepare recommendations on the implementation of tests for the detection of hereditary and congenital diseases, including, but not limited to, biotinidase deficiency and cystic fibrosis. The genetic disease unit shall also evaluate and prepare recommendations on the availability and effectiveness of preventative followup interventions, including the use of specialized medically necessary dietary products.

It is the intent of the Legislature that funds for the support of the evaluations and recommendations required pursuant to this subdivision, and for the activities authorized pursuant to subdivision (e), shall be provided in the annual Budget Act appropriation from the Genetic Disease Testing Fund.

(g) Health care providers that contract with a prepaid group practice health care service plan that annually has at least 20,000 births among its membership, may provide, without contracting with the department, any or all of the testing and counseling services required to be provided under this section or the regulations adopted pursuant thereto, if the services meet the quality standards and adhere to the regulations established by the department and the plan pays that portion of a fee established under this section that is directly attributable to the department's cost of administering the testing or counseling service and to any required testing or counseling services provided by the state for plan members. The payment by the plan, as provided in this subdivision, shall be deemed to fulfill any obligation the provider or the provider's patient may have to the department to pay a fee in connection with the testing or counseling service.

(h) The department may appoint experts in the area of genetic screening, including, but not limited to, cytogenetics, molecular biology, prenatal, specimen collection, and ultrasound to provide expert advice and opinion on the interpretation and enforcement of regulations adopted pursuant to this section. These experts shall be designated agents of the state with respect to their assignments. These experts shall receive no salary, but shall be reimbursed for expenses associated with the purposes of this section. All expenses of the experts for the purposes of this section shall be paid from the Genetic Disease Testing Fund.

SEC. 34. Section 127260 of the Health and Safety Code is amended to read:

127260. (a) The Advisory Health Council, upon review of a decision of the department, shall do one of the following:

(1) Enter an order affirming the decision of the department if it finds as to the respective basis of review that:

(A) The application was processed and the hearing conducted was consistent with this chapter, or that any inconsistency with respect thereto was immaterial to the decision of the department.

(B) There is substantial evidence in the record supporting the department's decision.

(C) The department has not acted in an arbitrary and capricious manner.

(2) Enter an order remanding the decision of the department if it finds as to the respective basis of review that:

(A) The application was not processed or the hearing conducted was not consistent with this chapter, and this inconsistency was material to the decision rendered by the department.

(B) There is no substantial evidence in the record supporting the decision.

(C) The department has acted in an arbitrary or capricious manner.

(3) Enter an order reversing the decision of the department if it finds as to the respective basis of review that:

(A) The application was not processed or the hearing conducted was not consistent with the provisions of this chapter, and this inconsistency was material to the decision rendered by the department.

(B) There is no substantial evidence in the record supporting the decision.

(C) The department has acted in an arbitrary or capricious manner.

(b) Orders of the council authorized by this section shall be made only upon the affirmative vote of a majority of the council, with at least six of the affirmative votes cast by the following members:

(1) Representative of consumers of services for persons with intellectual disabilities appointed by the Governor.

(2) Representative of consumers of mental health services appointed by the Governor.

(3) Representative of local government appointed by the Governor.

(4) Representatives of the general consumer public appointed by the Governor, Senate Committee on Rules, or Speaker of the Assembly.

(5) Members of the Legislature appointed by the Senate Committee on Rules or Speaker of the Assembly.

SEC. 35. Section 129395 of the Health and Safety Code is amended to read:

129395. “Hospital” includes hospitals for the chronically ill and impaired, public health centers, community mental health centers, facilities for persons with intellectual disabilities, and general, tuberculosis, mental, and other types of hospitals and related facilities, including laboratories, outpatient departments, nurses’ home and training facilities, and central service facilities operated in connection with hospitals, diagnostic or treatment centers, nursing homes, and rehabilitation facilities, but except for facilities for persons with intellectual disabilities does not include any institution furnishing primarily domiciliary care.

SEC. 36. Section 10118 of the Insurance Code is amended to read:

10118. A policy of disability insurance delivered or issued for delivery in this state more than 120 days after the effective date of this section, that provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract, 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 (a) incapable of self-sustaining employment by reason of an intellectual disability or physical handicap and (b) chiefly dependent upon the insured for support and maintenance, provided proof of the incapacity and dependency is furnished to the insurer by the insured within 31 days of the child’s attainment of the limiting age and subsequently as may be required by the insurer, but not more frequently than annually after the two-year period following the child’s attainment of the limiting age.

Disability policies currently approved by the commissioner that are delivered or issued for delivery more than 120 days after the effective date of this section shall be automatically construed to be in compliance with this section and need not be refiled or reprinted. Disability policies submitted to the commissioner for approval on and after the effective date of this section shall contain provisions in compliance with this section.

SEC. 37. Section 10124 of the Insurance Code is amended to read:

10124. (a) A self-insured employee welfare benefit plan delivered or issued for delivery in this state more than 120 days after the effective date of this section, that provides that coverage of a dependent child of an employee shall terminate upon

attainment of the limiting age for dependent children specified in the policy or contract, 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 (a) incapable of self-sustaining employment by reason of an intellectual disability or physical handicap and (b) chiefly dependent upon the employee for support and maintenance, provided proof of the incapacity and dependency is furnished to the employer or employee organization providing the plan or program of benefits by the employee within 31 days of the child's attainment of the limiting age and subsequently as may be required by the employer or employee organization, but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(b) As used in this section, "self-insured employee welfare benefit plan" means a plan or program of benefits provided by an employer or an employee organization, or both, for the purpose of providing hospital, medical, surgical, nursing, or dental services, or indemnification for the costs incurred for these services, to the employer's employees or their dependents.

SEC. 38. Section 10203.4 of the Insurance Code is amended to read:

10203.4. (a) Insurance under a group life insurance policy issued pursuant to Sections 10202, 10202.8, 10203, 10203.1, and 10203.7 may be extended to insure the dependents, or any class or classes thereof, of each insured employee who so elects, in amounts in accordance with some plan that precludes individual selection and that shall not be in excess of 100 percent of the insurance on the life of the insured employee.

(b) "Dependent" includes the member's spouse and all children from birth until 26 years of age, or a child 26 years of age or older who is both incapable of self-sustaining employment by reason of an intellectual disability or physical handicap and chiefly dependent upon the employee for support and maintenance if proof of the incapacity and dependency is furnished to the insurer by the employee within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer, but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(c) The premiums for the insurance on the dependents may be paid by the employer, the employee, or the employer and the employee jointly.

SEC. 39. Section 1001.20 of the Penal Code is amended to read:

1001.20. As used in this chapter:

(a) “Cognitive Developmental Disability” means any of the following:

(1) “Intellectual disability” means a condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(2) “Autism,” means 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 intellectual disability or autism, or that require treatment similar to that required for individuals with intellectual disability 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 toward the alleviation of cognitive developmental disability or toward 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 sociolegal 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 that cannot be provided by state agencies to developmentally disabled persons residing in a particular geographic catchment area, and that 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, that 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 that 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, that 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 that 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.

SEC. 40. Section 1346 of the Penal Code is amended to read:

1346. (a) When a defendant has been charged with a violation of Section 220, 243.4, 261, 261.5, 264.1, 273a, 273d, 285, 286, 288, 288a, 288.5, 289, or 647.6, and the victim either is a person 15 years of age or less or is developmentally disabled as a result of an intellectual disability, as specified in subdivision (a) of Section 4512 of the Welfare and Institutions Code, the people may apply for an order that the victim’s testimony at the preliminary hearing, in addition to being stenographically recorded, be recorded and preserved on videotape.

(b) The application for the order shall be in writing and made three days prior to the preliminary hearing.

(c) Upon timely receipt of the application, the magistrate shall order that the testimony of the victim given at the preliminary hearing be taken and preserved on videotape. The videotape shall be transmitted to the clerk of the court in which the action is pending.

(d) If at the time of trial the court finds that further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable within the meaning of Section 240 of the Evidence Code, the court may admit the videotape of the victim's testimony at the preliminary hearing as former testimony under Section 1291 of the Evidence Code.

(e) A videotape that is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the victim. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) A videotape made pursuant to this section shall be made available to the prosecuting attorney, the defendant, and his or her attorney for viewing during ordinary business hours. A videotape that is made available pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the victim.

(g) The tape shall be destroyed after five years have elapsed from the date of entry of judgment, except that if an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been rendered.

SEC. 41. Section 1370.1 of the Penal Code is amended to read:

1370.1. (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 18 years of age, 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 intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

(2) Prior to making the order directing that 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. A person shall not 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 a finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or a 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 a 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 another 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) A 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, a 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, a 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 a community board and care facility.

SEC. 42. Section 1376 of the Penal Code is amended to read:

1376. (a) As used in this section, “intellectual disability” means the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before 18 years of age.

(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 hearing to determine intellectual disability be conducted. Upon the submission of a declaration by a qualified expert stating his or her opinion that the defendant is a person with an intellectual disability, the court shall order a hearing to determine whether the defendant is a person with an intellectual disability. 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 intellectual disability. If the defendant does not request a court hearing, the court shall order a jury hearing to determine if the defendant is a person with an intellectual disability. The jury hearing on intellectual disability 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 a person with an intellectual disability or that the defendant does not have an intellectual disability.

(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 intellectual disability. The defendant shall present evidence in support of the claim that he or she is a person with an intellectual disability. The prosecution shall present its case regarding the issue of whether the defendant is a person with an intellectual disability. 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 intellectual disability. 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 a person with an intellectual disability, including, but not limited to, the appointment of, and examination of the defendant by, qualified experts. A statement made by the defendant

during an examination ordered by the court shall not 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 a person with an intellectual disability. The jury shall return a verdict that either the defendant is a person with an intellectual disability or the defendant does not have an intellectual disability. 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 a person with an intellectual disability, and does not reach a unanimous verdict that the defendant does not have an intellectual disability, the court shall dismiss the jury and order a new jury impaneled to try the issue of intellectual disability. 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 a person with an intellectual disability, 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 intellectual disability.

(2) If the court finds that the defendant does not have an intellectual disability, 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 intellectual disability.

(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 a person with an intellectual disability, 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 does not have an intellectual disability, 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 intellectual disability shall occur at the conclusion of the sanity trial if the defendant is found sane.

SEC. 43. Section 2962 of the Penal Code is amended to read:

2962. As a condition of parole, a prisoner who meets the following criteria shall be required to be treated by the State Department of State Hospitals, and the State Department of State Hospitals shall provide the necessary treatment:

(a) (1) The prisoner has a severe mental disorder that is not in remission or cannot be kept in remission without treatment.

(2) 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, intellectual disability or other developmental disability, or addiction to or abuse of intoxicating substances.

(3) 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 Parole Hearings 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 State Hospitals have evaluated the prisoner at a facility of the Department of Corrections and Rehabilitation, and a chief psychiatrist of the Department of Corrections and Rehabilitation has certified to the Board of Parole Hearings 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 State Hospitals pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections and Rehabilitation, 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 and Rehabilitation.

(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 Parole Hearings pursuant to this paragraph, then the Board of Parole Hearings shall order a further examination by two independent professionals, as provided for in Section 2978.

(3) If at least one of the independent professionals who evaluate the prisoner pursuant to paragraph (2) concurs with the chief

psychiatrist's certification of the issues described in paragraph (2), this subdivision shall 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 14 years of age 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 18745.

(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 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.

SEC. 44. Section 1420 of the Probate Code is amended to read:

1420. “Developmental disability” means a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for the individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term includes intellectual disability, cerebral palsy, epilepsy, and autism. This term also includes handicapping conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but does not include other handicapping conditions that are solely physical in nature.

SEC. 45. Section 25276 of the Vehicle Code is amended to read:

25276. (a) A motor vehicle designed for carrying more than eight persons, including the driver, owned by a private, nonprofit organization that provides training or other activities for persons who have intellectual or physical disabilities, or both, and that is

certified by the Department of Rehabilitation or licensed by the State Department of Developmental Services, with respect to the providing of this training or other activities, may be equipped with a flashing amber light signal system.

(b) A motor vehicle, described in subdivision (a), may, while actually engaged in the transportation of persons described in subdivision (a) to or from a training or activity center operated by the organization, display the flashing amber lights of the system when necessarily parked upon a highway and in the process of loading or unloading persons.

(c) Subdivisions (a) and (b) apply to a motor vehicle that is rented, leased, or chartered by the organization.

SEC. 46. Section 4417 of the Welfare and Institutions Code is amended to read:

4417. The State Department of Developmental Services may:

(a) Disseminate educational information relating to the prevention, diagnosis and treatment of intellectual disability.

(b) Upon request, advise all public officers, organizations and agencies interested in the developmental disabilities of the people of the state.

(c) Conduct educational and related work that will tend to encourage the development of proper developmental disabilities facilities throughout the state.

The department may organize, establish and maintain community mental hygiene clinics for the prevention, early diagnosis, and treatment of intellectual disability. These clinics may be maintained only for persons not requiring institutional care, who voluntarily seek the aid of the clinics. These clinics may be maintained at the locations in the communities of the state designated by the director, or at any institution under the jurisdiction of the department designated by the director.

The department may establish rules and regulations that are necessary to carry out this section. This section does not authorize any form of compulsory medical or physical examination, treatment, or control of any person.

SEC. 47. Section 4426 of the Welfare and Institutions Code is amended to read:

4426. The department may inquire into the manner in which a person with an intellectual disability who is subject to commitment, not confined in a state hospital, is cared for and

maintained. If, in its judgment, the person is not properly and suitably cared for, the department may apply to a judge of the superior court for an order to commit him or her to a state hospital under the provisions of this code. This order shall not be made unless the judge finds, and certifies in the order, that the person is not properly or suitably cared for by his or her relatives, legal guardian, or conservator, or that it is dangerous to the public to allow him or her to be cared for and maintained by the relatives, legal guardian, or conservator.

SEC. 48. Section 4512 of the Welfare and Institutions Code is amended to read:

4512. As used in this division:

(a) “Developmental disability” means a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

(b) (1) “Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of services and supports that are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

(2) Services and supports listed in the individual program plan may include, but are not limited to, any of the following: diagnosis,

evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, child care, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-term out-of-home care, social skills training, specialized medical and dental care, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities.

(3) Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

(c) Notwithstanding subdivisions (a) and (b), for any organization or agency receiving federal financial participation under the federal Developmental Disabilities Assistance and Bill of Rights Act, as amended “developmental disability” and “services for persons with developmental disabilities” means the terms as defined in the federal act to the extent required by federal law.

(d) “Consumer” means a person who has a disability that meets the definition of developmental disability set forth in subdivision (a).

(e) “Natural supports” means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and

associations developed through participation in clubs, organizations, and other civic activities.

(f) “Circle of support” means a committed group of community members, who may include family members, meeting regularly with an individual with developmental disabilities in order to share experiences, promote autonomy and community involvement, and assist the individual in establishing and maintaining natural supports. A circle of support generally includes a plurality of members who neither provide nor receive services or supports for persons with developmental disabilities and who do not receive payment for participation in the circle of support.

(g) “Facilitation” means the use of modified or adapted materials, special instructions, equipment, or personal assistance by an individual, including assistance with communications, that will enable a consumer to understand and participate to the maximum extent possible in the decisions and choices that affect his or her life.

(h) “Family support services” means services and supports that are provided to a child with developmental disabilities or his or her family and that contribute to the ability of the family to reside together.

(i) “Voucher” means an authorized alternative form of service delivery in which the consumer or family member is provided with a payment, coupon, chit, or other form of authorization that enables the consumer or family member to choose his or her own service provider.

(j) “Planning team” means the individual with developmental disabilities, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, the authorized representative, including those appointed pursuant to subdivision (d) of Section 4548 and subdivision (e) of Section 4705, one or more regional center representatives, including the designated regional center service coordinator pursuant to subdivision (b) of Section 4640.7, an individual, including a service provider, invited by the consumer, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, or the authorized representative, including those appointed pursuant to subdivision (d) of Section 4548 and subdivision (e) of Section 4705, and including a minor’s, dependent’s, or ward’s court-appointed

developmental services decisionmaker appointed pursuant to Section 319, 361, or 726.

(k) “Stakeholder organizations” means statewide organizations representing the interests of consumers, family members, service providers, and statewide advocacy organizations.

(l) “Substantial disability” means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

- (1) Self-care.
- (2) Receptive and expressive language.
- (3) Learning.
- (4) Mobility.
- (5) Self-direction.
- (6) Capacity for independent living.
- (7) Economic self-sufficiency.

A reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

SEC. 49. Section 4801 of the Welfare and Institutions Code is amended to read:

4801. (a) Judicial review shall be in the superior court for the county in which the state hospital, developmental center, community care facility, or health facility is located, except that, if the adult 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 of the county that determined the question of the mental competence of the defendant. The adult requesting to be released shall be informed of his or her right to counsel by a member of the staff of the state hospital, developmental center, community care facility, or health facility and by the court; and if he or she does not have an attorney for the proceedings, the court shall immediately appoint the public defender or other attorney to assist him or her in the preparation of a petition for the writ of habeas corpus and to represent him or her in the proceedings. The person shall pay the costs of those legal services if he or she is able.

(b) At the time the petition for the writ of habeas corpus is filed with the court, the clerk of the court shall transmit a copy of the

petition, together with notification as to the time and place of an evidentiary hearing in the matter, to the parent or conservator of the person seeking release or for whom release is sought and to the director of the appropriate regional center. Notice shall also be provided to the director of the appropriate developmental center if the person seeking release or for whom release is sought resides in a developmental center. The notice shall be sent by registered or certified mail with proper postage prepaid, addressed to the addressee's last known address, and with a return receipt requested.

(c) The court shall either release the adult or order an evidentiary hearing to be held not sooner than five judicial days nor more than 10 judicial days after the petition and notice to the adult's parent or conservator and to the director of the appropriate regional center and developmental center are deposited in the United States mail pursuant to this section.

(1) Except as provided in paragraph (2), if the court finds (A) that the adult requesting release or for whom release is requested is not developmentally disabled, or (B) that he or she is developmentally disabled and that he or she is able to provide safely for his or her basic personal needs for food, shelter, and clothing, he or she shall be released within 72 hours. If the court finds that he or she is developmentally disabled and that he or she is unable to provide safely for his or her basic personal needs for food, shelter, or clothing, but that a responsible person or a regional center or other public or private agency is willing and able to provide therefor, the court shall release the developmentally disabled adult to the responsible person or regional center or other public or private agency, as the case may be, subject to any conditions that the court deems proper for the welfare of the developmentally disabled adult and that are consistent with the purposes of this division.

(2) If the person is charged with a violent felony and has been committed to his or her current placement pursuant to Section 1370.1 of the Penal Code or Section 6500, and the court finds (A) that the adult requesting release or for whom release is requested is not a person with a developmental or intellectual disability, or (B) that he or she is able to provide safely for his or her basic personal needs for food, shelter, and clothing, the court shall, before releasing the person, determine that the release will not pose a danger to the health or safety of others due to the person's known

behavior. If the court finds there is no danger pursuant to the finding required by subparagraph (D) of paragraph (1) of subdivision (a) of Section 1370.1 of the Penal Code, the person shall be released within 72 hours. If the person's release poses a danger to the health or safety of others, the court may grant or deny the request, taking into account the danger to the health or safety of others posed by the person. If the court finds that release of the person can be made subject to conditions that the court deems proper for the preservation of public health and safety and the welfare of the person, the person shall be released subject to those conditions.

(d) If in a proceeding under this section, the court finds that the adult is developmentally disabled and has no parent or conservator, and is in need of a conservator, the court shall order the appropriate regional center or the state department to initiate, or cause to be initiated, proceedings for the appointment of a conservator for the developmentally disabled adult.

(e) This section shall become operative January 1, 1988.

SEC. 50. Section 5002 of the Welfare and Institutions Code is amended to read:

5002. 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.

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, persons with an intellectual disability, and mentally disordered criminal offenders, except as specifically provided in Section 4011.6 of the Penal Code or as specifically provided in other statutes.

SEC. 51. Section 5008 of the Welfare and Institutions Code is amended to read:

5008. 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 that may appear to constitute a problem. A person who provides evaluation services shall be a

properly qualified professional and may be a full-time employee of an agency providing evaluation services or may be a part-time employee 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 hospital and other services that 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 whom 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. A person shall be advised of available precare services that prevent initial recourse to hospital treatment or aftercare services that support adjustment to community living following hospital treatment. These services may be provided through county welfare departments, the State Department of State Hospitals, 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 that 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 the 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 persons with intellectual disabilities by reason of having an intellectual disability 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.

SEC. 52. Section 5325 of the Welfare and Institutions Code is amended to read:

5325. 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 person with an intellectual disability committed to a state hospital pursuant to Article 2 (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 these services, and otherwise brought to his or her attention by additional means as the Director of Health Care Services may designate by regulation. Each person committed to a state hospital shall also 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 those services and otherwise brought to his or her attention by any additional means as the Director of State Hospitals 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 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 that 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 Health Care Services and the Director of State Hospitals 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 that are found by the State Department of Health Care Services and the State Department of State Hospitals to be frequently misunderstood, ignored, or denied.

Upon admission to a facility each patient, involuntarily detained for evaluation or treatment under provisions of this part, or as a voluntary patient for psychiatric evaluation or treatment to a health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered, shall immediately be given a copy of a State Department of Health Care Services prepared patients' rights handbook. Each person committed to a state hospital, upon admission, shall immediately be given a copy of a State Department of State Hospitals prepared patients' rights handbook.

The State Department of Health Care Services and the State Department of State Hospitals shall prepare and provide the forms specified in this section. The State Department of Health Care Services shall prepare and provide the forms specified in Section 5157.

The rights specified in this section may not be waived by the person's parent, guardian, or conservator.

SEC. 53. Section 5585.25 of the Welfare and Institutions Code is amended to read:

5585.25. "Gravely disabled minor" means a minor who, as a result of a mental disorder, is unable to use the elements of life that are essential to health, safety, and development, including

food, clothing, and shelter, even though provided to the minor by others. Intellectual disability, epilepsy, or other developmental disabilities, alcoholism, other drug abuse, or repeated antisocial behavior do not, by themselves, constitute a mental disorder.

SEC. 54. Section 6250 of the Welfare and Institutions Code is amended to read:

6250. 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 6331), sexually violent predators pursuant to Article 4 (commencing with Section 6600), or persons with intellectual disabilities pursuant to Article 2 (commencing with Section 6500) of Chapter 2.

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.

SEC. 55. The heading of Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code is amended to read:

Article 2. Persons with Intellectual Disabilities

SEC. 56. Section 6505 of the Welfare and Institutions Code is amended to read:

6505. 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 person alleged to have a developmental disability, and may have the order executed by a peace officer.

SEC. 57. Section 6513 of the Welfare and Institutions Code is amended to read:

6513. (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 where a state hospital or developmental center maintains a treatment program

for persons with intellectual disabilities who are a danger to themselves or others.

(2) The judicial proceedings relate to a person with an intellectual disability 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 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.

SEC. 58. Section 6551 of the Welfare and Institutions Code is amended to read:

6551. (a) (1) If the court is in doubt as to whether the person is mentally disordered or has an intellectual disability, the court shall order the person to be taken to a facility designated by the county and approved by the State Department of Social Services 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.

(2) 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.

(b) (1) If the professional person in charge of the facility finds that the person has an intellectual disability, the juvenile court may direct the filing in any other court of a petition for the commitment of a minor as a person with an intellectual disability to the State Department of Developmental Services for placement in a state hospital. In this 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.

(2) 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.

(c) 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 a mental disorder requiring intensive treatment or does not have an intellectual disability, 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.

(d) An 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.

(e) The jurisdiction of the juvenile court over the minor shall be suspended during the time that 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 person with an intellectual disability is filed or under remand for 90 days for intensive treatment or commitment ordered by the court.

SEC. 59. The heading of Article 4 (commencing with Section 6715) of Chapter 3 of Part 2 of Division 6 of the Welfare and Institutions Code is amended to read:

Article 4. Persons with Intellectual Disabilities

SEC. 60. Section 6715 of the Welfare and Institutions Code is amended to read:

6715. The court shall inquire into the financial condition of the parent, guardian, or other person charged with the support of a person committed as having an intellectual disability, and if it finds the person able to do so, in whole or in part, it shall make a further order, requiring him or her to pay, to the extent the court considers the person able, the expenses of the proceedings in connection with the investigation, detention, and commitment of the person committed, and the expenses of the committed person's delivery to the institution, and to pay to the county, at stated periods, the sums the court deems proper, during the time the person remains in the institution or on leave of absence to a licensed hospital, facility, or home for the care of those persons. This order may be enforced by further orders as the court deems necessary, and may be varied, altered, or revoked in its discretion.

The court shall designate a county officer to keep a record of payments ordered to be made, to receive, receipt for, and record the payments made, to pay over the payments to the county treasurer, to see that the persons ordered to make the payments comply with the orders, and to report to the court any failure to make the payments.

SEC. 61. Section 6717 of the Welfare and Institutions Code is amended to read:

6717. The cost necessarily incurred in determining whether a person is a fit subject for commitment and securing his or her commitment, is a charge upon the county where he or she is committed. These 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 that person and shall be paid by him or her, or by his or her guardian or conservator, as provided in Division 4 (commencing with Section 1400) of the Probate Code, or shall be paid by persons legally liable for his or her maintenance, unless otherwise ordered by the judge.

SEC. 62. The heading of Article 4 (commencing with Section 6740) of Chapter 4 of Part 2 of Division 6 of the Welfare and Institutions Code is amended to read:

Article 4. Persons with Intellectual Disabilities

SEC. 63. Section 6740 of the Welfare and Institutions Code is amended to read:

6740. The court shall attach to the order of commitment of a person with an intellectual disability 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 place of commitment with the order.

SEC. 64. Section 6741 of the Welfare and Institutions Code is amended to read:

6741. The sheriff or probation officer, whichever is designated by the court, may execute the order of commitment with respect to a person with an intellectual disability.

In a case in which the probation officer executes the order of commitment, he or she shall be compensated for transporting the person to a state hospital in the amount and manner that a sheriff is compensated for similar services.

SEC. 65. Section 7275 of the Welfare and Institutions Code is amended to read:

7275. The husband, wife, father, mother, or children of a patient in a state hospital for the mentally disordered, the estates of these persons, and the guardian or conservator and administrator of the estate of the patient shall cause him or her to be properly and suitably cared for and maintained, and shall pay the costs and charges for 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 the person shall be liable for his or her care, support, and maintenance in a state institution of which he or she is a patient. The liability of these persons and estates shall be a joint and several liability, and the 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 persons with intellectual disabilities in state hospitals.

SEC. 66. Section 7351 of the Welfare and Institutions Code is amended to read:

7351. 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.” A judicially committed patient or patient with an intellectual disability granted a leave of absence on or after July 1, 1969, and a 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.

SEC. 67. Section 11014 of the Welfare and Institutions Code is amended to read:

11014. To the extent that any provision of this part prohibits the granting of aid to persons confined in a public institution for tuberculosis or mental disease or as a result of the diagnosis of tuberculosis, intellectual disability, or psychosis permitted by federal law, that provision shall be inoperative.

SEC. 68. (a) It is the intent of the Legislature that this act shall be construed to amend provisions of state law to replace the term “mental retardation” with “intellectual disability,” and the term “mentally retarded person” with “person with intellectual disabilities,” and shall not be construed to change the coverage, eligibility, rights, responsibilities, or substantive definitions referred to in the amended provisions of this act.

(b) It is the intent of the Legislature that future statutory and administrative revisions to reflect the change in terminology provided for in this act shall be made only in the course of other necessary revisions or amendments, in order to minimize costs to the state.

(c) As used in a state regulation, state publication, or other writing, the terms “mental retardation” and “mentally retarded person” have the same meaning as the terms “intellectual disability” and “person with an intellectual disability,” unless the context or an explicit provision of federal or state law clearly requires a different meaning.

(d) For purposes of this section, “person” includes child, defendant, individual, minor, pupil, and other words used to describe a type of person.

SEC. 69. Any section of any act enacted by the Legislature during the 2012 calendar year, except for Senate Bill 1381, that takes effect on or before January 1, 2013, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2012 calendar year and takes effect on or before January 1, 2013, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

Approved _____, 2012

Governor