

AUDITOR/CONTROLLER-RECORDER COUNTY CLERK



COUNTY OF SAN BERNARDINO

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LARRY WALKER
Auditor/Controller-Recorder
County Clerk

ELIZABETH A. STARBUCK
Assistant Auditor/Controller-Recorder
Assistant County Clerk

March 1, 2006

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



RE: Mentally Disordered Offenders: Treatment as a Condition of Parole
CSM 00-TC-28
Penal Code Sections 2966 and 2962
Statutes of 1985, Chapter 1419; Statutes of 1986, Chapter 858; Statutes of 1987, Chapter 687;
Statutes of 1988, Chapter 658; Statutes of 1989, Chapter 228; Statutes of 1994, Chapter 706

Dear Ms. Higashi:

Pursuant to my discussion with Nancy Patton on February 28, we are requesting that the above named test claim be taken off of the March 2006 agenda for the following reasons:

1. The Draft Staff Analysis in the Commission of State Mandates (CSM) letter dated January 12, 2006 recommended that the test claim be denied on the basis that the original legislation in Statutes of 1985, Chapter 1419 was not cited in the test claim heading. The recommendation to deny the claim was not based on the merits of the test claim, but on an inadvertent omission.
2. The County of San Bernardino responded on February 2, 2006 to the Draft Staff Analysis. An amended test claim was attached and was accepted as part of the San Bernardino County's comments. The amendment was prepared based on the rules in place as of the original test claim filing date of July 2, 2001. The Commission staff has directed the County to submit an amended test claim using the new test claim filing form.

Therefore, I respectfully request that the test claim for the March hearing be removed from the agenda in order to give your staff time to consider the amended test claim. The amended test claim is attached and submitted for your review.

If you have any questions, please call me at (909) 386-8850.

Sincerely,

A handwritten signature in cursive script that reads "Bonnie Ter Keurst".

Bonnie Ter Keurst
Reimbursable Projects Section Manager

BT:wds

Attachments

Commission on State Mandates

Original List Date: 7/10/2001 Mailing Information: Draft Staff Analysis
Last Updated: 12/21/2005
List Print Date: 01/12/2006 Mailing List
Claim Number: 00-TC-28
Issue: Mentally Disordered Offenders: Treatment as a Condition of Parole

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Mark Sigman
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4095 Lemon Street
P O Box 512
Riverside, CA 92502

Tel: (951) 955-2700
Fax: (951) 955-2720

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Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

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Mr. David Hinchee
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California Public Defenders Association
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Fax: (916) 362-5498

Ms. Terrie Tatosian

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Mr. Steve Keil

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Fax: (916) 441-5507

Ms. Marianne O'Malley

Legislative Analyst's Office (B-29)
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Fax: (916) 324-4281

Mr. J. Bradley Burgess

Public Resource Management Group
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Roseville, CA 95661

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Fax: (916) 327-0225

Ms. Bonnie Ter Keurst

County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

Claimant

Tel: (909) 386-8850

Fax: (909) 386-8830

Ms. Ginny Brummels

State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256

Fax: (916) 323-6527 *Down 340*

Mr. Allan Burdick

MAXMUS
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Fax: (916) 485-0111

Mr. Leonard Kaye, Esq.

County of Los Angeles

Auditor-Controller's Office

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Los Angeles, CA 90012

Tel: (213) 974-8564

Fax: (213) 617-8106

Commission on State Mandates

List Date: 07/10/2001

Mailing Information

Mailing List

Claim Number: 00-TC-28 Claimant: County of San Bernardino

Subject: Statutes of 1994, Chapter 706 et al; Penal Code Section 2966

Sue: Mentally Disordered Offenders: Treatment as a Condition of Parole

~~Harmeet Barkschat,
Mandate Resource Services
5325 Elk Horn Blvd #307
8254 Heath Peak Place
Antelope CA 95843
Sacramento, CA 95842~~
Interested Person

*Spoke w/ Harmeet
Does not do County Claims
just school & College. 3/1/06 WDS*

Mr. Louie DiNinni, Executive Officer
Board of Prison Terms

1515 K Street, Suite 600
Sacramento CA 95814-4053
Tel: (916) 445-1539
FAX: (916) 445-5242
State Agency

~~Mr. Glenn Haas, Bureau Chief (B-8)~~ *Ms. Ginny Brummels*
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Mr. Steve Keil,
California State Association of Counties

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FAX: (916) 441-5507
Interested Person

BONNIE TERKEURST
~~Mr. John Legger, SB-90 Coordinator~~
Auditor-Controller's Office

222 West Hospitality Lane
San Bernardino CA 92415-0018
Tel: (909) 386-8850
FAX: (909) 386-8830
Claimant

*Please send a copy
to Jac Crawford
County of San Luis
Obispo,
Calif
93408

Mail to County Government
Center
Room D 320
San Luis Obispo, Ca 93408*

Claim Number

00-TC-20

Claimant

County of San Bernardino

Subject Statutes of 1994, Chapter 706 et al; Penal Code Section 2966

Issue Mentally Disordered Offenders: Treatment as a Condition of Parole

~~Mr. James Lombard, Principal Analyst (A-15)~~
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Mr. Manuel Medeiros, Asst. Attorney General (D-8)
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 State Agency

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 Interested Person

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 Legislative Analysts' Office

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 Sacramento CA 95814

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 FAX: (916) 324-4281
 Interested Person

Claim Number

00-TC-23

Claimant

County of San Bernardino

Subject

Statutes of 1994, Chapter 706 et al; Penal Code Section 2966

Issue

Mentally Disordered Offenders: Treatment as a Condition of Parole

Mr. Keith B. Petersen, President
Sixten & Associates

5252 Balboa Avenue Suite 807
San Diego CA 92117

Tel: (858) 514-8605
FAX: (858) 514-8645

Interested Person

Mr. Steve Smith, CEO

~~Mandated Cost Systems, Inc.~~ Steve Smith Enterprises, Inc.

4633 Whitney Ave., Suite A

~~2275 Watt Avenue Suite C~~

~~Sacramento CA 95823~~

Sacramento, CA 95821

483-4231

~~Tel: (916) 487-4435~~

~~FAX: (916) 487-9662~~

483-1403

Interested Person

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Division of Audits (B-8)

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State Agency

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Wellhouse & Associates

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FAX: (916) 368-5723

Interested Person

Mr. Gary Winsom, President
California Public Defenders Association

3273 Ramos Circle, Suite 100
Sacramento CA 95827

Tel: (916) 362-1686
FAX: (916) 362-5498

Interested Person

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March 1, 2006

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Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: Mentally Disordered Offenders: Treatment as a Condition of Parole
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Statutes of 1985, Chapter 1419; Statutes of 1986, Chapter 858; Statutes of 1987, Chapter 687;
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Dear Ms. Higashi:

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Therefore, I respectfully request that the test claim for the March hearing be removed from the agenda in order to give your staff time to consider the amended test claim. The amended test claim is attached and submitted for your review.

If you have any questions, please call me at (909) 386-8850.

Sincerely,

Bonnie Ter Keurst
Reimbursable Projects Section Manager

BT:wds

Attachments

1. TEST CLAIM TITLE

Mentally Disordered Offenders: Treatment as a Condition of Parole (CSM 00-TC-28)

2. CLAIMANT INFORMATION

County of San Bernardino

Name of Local Agency or School District

Bonnie Ter Keurst

Claimant Contact

Reimbursable Projects Section Manager

Title

222 W. Hospitality Lane, 4th Floor

Street Address

San Bernardino, CA 92415

City, State, Zip

(909)386-8850

Telephone Number

(909)386-8830

Fax Number

bterkeurst@acr.sbcounty.gov

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Claimant Representative Name

Title

Organization

Street Address

City, State, Zip

Telephone Number

Fax Number

E-Mail Address

For CSM Use Only

Filing Date: **RECEIVED**
MAR 02 2006
COMMISSION ON STATE MANDATES

Test Claim #: *Amendment to 00-TC-28*

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

Penal Code Section 2966
 Penal Code Section 2962
 Statutes of 1985, Chapter 1419
 Statutes of 1986, Chapter 858
 Statutes of 1987, Chapter 687
 Statutes of 1988, Chapter 658
 Statutes of 1989, Chapter 228
 Statutes of 1994, Chapter 706

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages 1 to 5.

6. Declarations: pages 6 to 8.

7. Documentation: pages 9 to 47.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Bonnie Ter Keurst
Print or Type Name of Authorized Local Agency
or School District Official

Reimbursable Projects Section Manager
Print or Type Title

Bonnie Ter Keurst
Signature of Authorized Local Agency or
School District Official

March 1, 2006
Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

COUNTY OF SAN BERNARDINO
TEST CLAIM

As Amended February 28, 2006

Penal Code Section 2966

Penal Code Section 2962

Statutes of 1985, Chapter 1419

Statutes of 1986, Chapter 858

Statutes of 1987, Chapter 687

Statutes of 1988, Chapter 658

Statutes of 1989, Chapter 228

Statutes of 1994, Chapter 706

MENTALLY DISORDERED OFFENDERS:
TREATMENT AS A CONDITION OF PAROLE

TEST CLAIM NARRATIVE:

The statutes cited above that are the subject of this test claim added and amended Section 2966 of the California Penal Code. Section 2966 allows a prisoner or parolee to file a petition in superior court to challenge the State's determination that the prisoner/parolee is a mentally disordered offender (MDO) and subject to Penal Code Section 2962 which requires continued mental health treatment as a condition of parole.

Section 2962 defines the criteria under which the State can require an MDO be treated for a severe mental disorder by the State Department of Mental Health. The criteria includes:

- (a) The prisoner has a severe mental disorder that is not in remission or cannot be kept in remission without treatment.
- (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) Psychiatric professionals of the State Department of Mental Health and the Department of Corrections have certified to the Board of Prison Terms that the prisoner has a severe mental disorder.
- (e) The prisoner received a determinate sentence and the prison sentence was imposed for specified crimes such as voluntary manslaughter, kidnapping, robbery with a dangerous weapon, and rape.

Section 2966 allows the prisoner or parolee to request a hearing before the State Board of Prison Terms to appeal the determination that Section 2962 applies to them. If the MDO continues to disagree with the Section 2962 determination of the Board of Prison Terms he or she may appeal that decision to the superior court of the county in which they are incarcerated or being treated.

The superior court is then required to conduct a civil hearing on the petition within 60 calendar days. The MDO is entitled to representation by a public defender (or a county-provided indigent defense attorney) and has the right to a jury trial requiring a unanimous verdict of the jury to uphold the state's position. The district attorney is required to represent the state's determination of the applicability of Section 2962 in these proceedings.

It should be noted that the determination and the defense of an MDO involves complex psychiatric issues such as whether the offender has a severe mental disorder, that the severe mental disorder is not in remission or cannot be kept in remission if the person's treatment is not continued, and that, by reason of his or her severe mental disorder, the prisoner represents a substantial danger of physical harm to others. Therefore, the County of San Bernardino has had to provide specialized attorney, expert, investigator, paralegal, and secretarial services in order to perform these mandated duties.

Upon the filing of an appeal pursuant to Penal Code Section 2966, each MDO's criminal and treatment case information must be carefully reviewed by the district attorney and the public defender. Reviewing attorneys may need travel to and from state hospitals where detailed MDO medical records and other case file information is maintained. Forensic expert witnesses are appointed by the court at the request of indigent defense counsel. Such experts are regularly consulted in preparing the case for trial.

Once an MDO appeal proceeding is scheduled, MDOs are transported from their State hospitals or prison to county facilities (and returned if required) by the county sheriff's department. The sheriff's department is also responsible for MDO care and custody associated with confinement awaiting, during, and (if necessary) after their court proceeding.

Therefore, under the subject law, the county has had to provide specialized legal services in selecting, filing, adjudicating MDO defendants as well as transporting and housing such defendants during the pendency of their appeals.

The State's MDO population is primarily housed at Patton and Atascadero State Hospitals. Because Section 2966 hearings must take place in the superior court of the county in which the hospital is located, San Bernardino County and San Luis Obispo County (respectively) are subject to the majority of the costs for this mandate.

SIMILAR SERVICES HAVE BEEN FOUND TO BE REIMBURSABLE

The types of 'costs mandated by the state', as defined in Government Code Section 17514 and claimed herein are all reimbursable to the County under comparable programs, like the 'not guilty by reason of insanity' (NGI), 'sexually violent predator' (SVP), and the 'mentally disordered offender' (MDO) extended commitment programs.

These activities include:

- Review of the state's written evaluation and supporting affidavits indicating that the offender's severe mental disorder is not in remission or cannot be kept in remission

without continued treatment;

- Prepare and file responses with the superior court to the prisoner's petition to appeal the Board of Prison Terms decision;
- Represent the State and the indigent prisoner in civil hearing on the petition and any subsequent petitions or hearings regarding the applicability of Penal Code Section 2962;
- Retain necessary experts, investigators, and professionals to prepare for the civil trial and any subsequent petitions;
- Travel to and from state hospitals where detailed medical records and case files are maintained;
- Travel to and from state hospitals by the defense counsel in order to meet with the prisoner client;
- Provide transportation and custody by the county sheriff's department of each potential mentally disordered offender before, during, and after the civil proceedings.

WIC 4117 PROVIDES LIMITED REIMBURSEMENT FOR MDO APPEALS

It should be noted that WIC 4117 provides very limited reimbursement for MDO appeals. For example, no reimbursement for indirect costs is provided. Further WIC 4117 is not a reliable funding source. Even reimbursement for a small percentage of a claimant's costs may not be available because the appropriation is exhausted and no deficiency is authorized. Therefore, in order to ensure the uniform and reliable performance of MDO appeal proceedings throughout the State it is imperative that dependable and comprehensive reimbursement for all counties' MDO "costs mandated by the State" be provided.

MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by these statutes clearly meets both tests that the Supreme Court in the *County of Los Angeles v. State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on state Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" and the "carry out a state policy" tests. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

The statutory scheme set forth above imposes a unique requirement on local government. Only the county district attorney and public defender (or County provided defense attorney) may appear and represent the respective parties in these court proceedings. Where transportation and housing cannot be provided by the State institution, the county sheriff's department must perform these functions. This mandate applies only to local government.

Mandate Carries Out a State Policy

The mandate clearly carries out state policy. In Penal Code Section 2960, the Legislature finds that if the severe mental disorders of these prisoners are not in remission or cannot be kept in remission at the time of their parole or upon termination of parole, there is a danger to society, and the state has a compelling interest in protecting the public by requiring these prisoners to continue to receive treatment for these disorders.

GOVERNMENT CODE SECTION 17556 DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code Section 17556 which would prohibit a finding of costs mandated by the state. The letter in parenthesis represents the pertinent subsection of 17556.

- (a) San Bernardino County did not request the legislation imposing the mandate.
- (b) The statutes do not affirm for the state that which had been declared existing law or regulation by action of the courts.
- (c) The statutes do not implement a federal law or regulation.
- (d) The statutes do not provide fee authority sufficient to pay for the mandated program
- (e) The statutes do not provide for offsetting savings resulting which result in no net costs to local agencies or school districts, nor do they include additional revenue specifically intended to sufficiently fund the costs of the state mandate.
- (f) The statutes do not impose duties expressly included in a ballot measure approved by the voters in a statewide election.
- (g) The costs claimed for reimbursement are not related to the enforcement of a new crime or infraction.

Therefore, the above seven disclaimers do not prohibit a finding for state reimbursement for the costs mandated by the state as contained in these test claim statutes.

COSTS MANDATED BY THE STATE:

Government Code Section 17514 defines "costs mandated by the state" as:

"Any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of

an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The activities required by Penal Code Section 2966 as added and/or amended by the statutes of this test claim, result in increased costs which local agencies are required to incur after July 1, 1980, as a result of a statute enacted on or after January 1, 1975.

Therefore, based on the foregoing, the County of San Bernardino respectfully requests that the Commission on State Mandates determine that these test claim statutes impose reimbursable state-mandated costs pursuant to Section 6 of Article XIII B of the California Constitution.

EFFECTIVE DATES FOR REIMBURSEMENT

Due to the filing date of this test claim, July 2, 2001 (note: June 30, 2001 falls on a Saturday), local agencies are entitled to reimbursement for this program from July 1, 1999. All subject test claim statutes were chaptered and effective prior to July 1, 1999.

ESTIMATED COSTS

The following are estimated costs for a complete fiscal year (2000/01):

County of San Bernardino	\$290,000
County of San Luis Obispo	160,000

Statewide Cost Estimate FY 2000/01	\$450,000
	=====

The following are estimated costs for the fiscal year (2001/02) following the fiscal year for which the claim was filed:

County of San Bernardino	\$320,000
County of San Luis Obispo	176,000

Statewide Cost Estimate FY 2001/02	\$496,000
	=====

The following are estimated costs for the current fiscal year (2005/06):

County of San Bernardino	\$ 900,000
County of San Luis Obispo	460,000

Statewide Cost Estimate FY 2005/06	\$1,360,000
	=====

DECLARATION of CLAIMANT:

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Originally executed the 2nd day of July, 2001, at San Bernardino, California by Aly Saleh, Chief Deputy Auditor. This amendment is executed the 28th day of February, 2006 at San Bernardino, California by:

Bonnie Ter Keurst February 28, 2006
Bonnie Ter Keurst, Manager Reimbursable Projects

SCHEDULE OF EXHIBITS

Exhibit A: Penal Code Section 2966

Exhibit B: Penal Code Section 2962

Exhibit C: Statutes of 1986, Chapter 858

Exhibit D: Statutes of 1987, Chapter 687

Exhibit E: Statutes of 1988, Chapter 658

Exhibit F: Statutes of 1989, Chapter 228

Exhibit G: Statutes of 1994, Chapter 706

Exhibit H: Statutes of 1985, Chapter 1419

It is accurate that the Mentally Disordered Offender [MDO] civil commitment program was enacted in 1985 pursuant to Chapters 1418 and 1419, addressing Penal Code §§2970 and 2960 respectively, *operative on July 1, 1986*. It is also accurate that the "Penal Code Section 2966" Test Claim (00-TC-28) failed to list, "Statutes of 1985, Chapter 1419" amongst the various chaptered bills (5 in number), which reflect the statutory development of the 2966/MDO commitment provisions, as we know them. The earliest chaptered bill listed in the Test Claim is, "Statutes of 1986, chapter 858 (Section 4)," which amended Sections 2960 and 2970, and added sections 2962, 2964, 2966, 2972, 2974, 2976, 2978, and 2980 to the Penal Code, *operative January 1, 1987*.

Based thereon, we hereby seek to amend the Test Claim to include reference to, "Statutes of 1985, chapter 1419." [Prior to this enactment, indeed since 1969, Penal Code 2960 existed; however, Section 2960 simply provided for 72-hour mental health treatment and evaluation of prisoners about to be paroled, as well as 14-day intensive treatment.]

The 2970, 2972 and 2972.1 Test Claim (98-TC-09) similarly did not plead, "Statutes of 1985, Chapter 1419," pertaining to Section 2960, yet Statutes of 1985, Chapter 1418, pertaining to Penal Code 2970, specifically provided:

"(j) The definitions in Section 2960 apply to this section.

(k) If there is a conflict between the provisions of this section and Section 2960, the provisions of Section 2960 shall apply."

Clearly, some of the provisions of Statutes of 1985, Chapter 1419, namely definitions and other sections that conflict with Section 2970, were part of the foundational legislation for the civil commitment program addressed in the 2970, 2972 and 2972.1 Test Claim. Notwithstanding, "Statutes of 1985, chapter 1419" was not referenced in the Test Claim and the Test Claim was not rejected based on this technical exclusion. So too, the technical exclusion of a reference to "Statutes of 1985, chapter 1419," relative to this Test Claim pertaining to MDO/2966 commitments, should not be the basis for rejecting this good faith, well founded claim for reimbursement under SB 90.

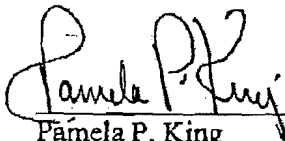
Because Penal Code §2966(b) provides in pertinent part, "A prisoner ... may file in the superior court of the county in which he or she is incarcerated or is being treated a petition for a hearing...", San Bernardino County and San Luis Obispo County are required to adjudicate, potentially through jury trial, hundreds of cases annually for individuals committed to prison from all of the fifty-six counties in the state. Other than the location of Patton State Hospital being in San Bernardino County, and Atascadero State Hospital being in San Luis Obispo County, there is no financial justification for these particular two counties to have to bear the cost of adjudicating parolee initiated court hearings for the other fifty-four counties.

The Mentally Disordered Offenders: Treatment as a Condition of Parole (00-TC-28) Test Claim was prepared by the Auditor's Office in 2001, not by legal staff. The

failure to list the initial chaptered bill is an error of form, not substance. Had this issue been raised early in the process, it could have easily been rectified by amendment, or even a new Test Claim should amendments be discouraged. After waiting almost six years for the processing of this Test Claim, denial of the claim based on a technical omission does not seem to be in keeping with the spirit of the reimbursement program contemplated by the State Mandates Claims Fund.

DECLARATION of CLAIMANT:

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.


Pamela P. King
Deputy Public Defender

San Bernardino, CA

February 3, 2006

CALIFORNIA CODES
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SECTION 2966

2966. (a) A prisoner may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing if so requested, for the purpose of proving that the prisoner meets the criteria in Section 2962. At the hearing, the burden of proof shall be on the person or agency who certified the prisoner under subdivision (d) of Section 2962. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in Section 2978. The prisoner shall be informed at the hearing of his or her right to request a trial pursuant to subdivision (b). The Board of Prison Terms shall provide a prisoner who requests a trial, a petition form and instructions for filing the petition.

(b) A prisoner who disagrees with the determination of the Board of Prison Terms that he or she meets the criteria of Section 2962, may file in the superior court of the county in which he or she is incarcerated or is being treated a petition for a hearing on whether he or she, as of the date of the Board of Prison Terms hearing, met the criteria of Section 2962. The court shall conduct a hearing on the petition within 60 calendar days after the petition is filed, unless either time is waived by the petitioner or his or her counsel, or good cause is shown. Evidence offered for the purpose of proving the prisoner's behavior or mental status subsequent to the Board of Prison Terms hearing shall not be considered. The order of the Board of Prison Terms shall be in effect until the completion of the court proceedings. The court shall advise the petitioner of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the petitioner shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing; however, in order to reduce costs, the rules of criminal discovery, as well as civil discovery, shall be applicable. The standard of proof shall be beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney. The court may, upon stipulation of both parties, receive in evidence the affidavit or declaration of any psychiatrist, psychologist, or other professional person who was involved in the certification and hearing process, or any professional person involved in the evaluation or treatment of the petitioner during the certification process. The court may allow the affidavit or declaration to be read and the contents thereof considered in the rendering of a decision or verdict in any proceeding held pursuant to subdivision (b) or (c), or subdivision (a) of Section 2972. If the court or jury reverses the determination of the Board of Prison Terms, the court shall stay the execution of the decision for five working days to allow for an orderly release of the prisoner.

(c) If the Board of Prison Terms continues a parolee's mental health treatment under Section 2962 when it continues the parolee's parole under Section 3001, the procedures of this section shall only be applicable for the purpose of determining if the parolee has a severe mental disorder, whether the parolee's severe mental disorder is not in remission or cannot be kept in remission without treatment, and whether by reason of his or her severe mental disorder, the parolee represents a substantial danger of physical harm to others.

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

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

The term "severe mental disorder" means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely.

The term "severe mental disorder" as used in this section does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances.

The term "remission" means a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support. A person "cannot be kept in remission without treatment" if during the year prior to the question being before the Board of Prison Terms or a trial court, he or she has been in remission and he or she has been physically violent, except in self-defense, or he or she has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, or he or she has intentionally caused property damage, or he or she has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan.

(b) The severe mental disorder was one of the causes of or was an aggravating factor in the commission of a crime for which the prisoner was sentenced to prison.

(c) The prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release.

(d) (1) Prior to release on parole, the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of Mental Health have evaluated the prisoner at a facility of the Department of Corrections, and a chief psychiatrist of the Department of Corrections has certified to the Board of Prison Terms that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior, that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to his or her parole release day, and that by reason of his or her severe mental disorder the prisoner represents a substantial danger of physical harm to others. For prisoners being treated by the State Department of Mental Health pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections, and the evaluation shall be done at a state hospital by

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the person at the state hospital in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections.

(2) If the professionals doing the evaluation pursuant to paragraph (1) do not concur that (A) the prisoner has a severe mental disorder, (B) that the disorder is not in remission or cannot be kept in remission without treatment, or (C) that the severe mental disorder was a cause of, or aggravated, the prisoner's criminal behavior, and a chief psychiatrist has certified the prisoner to the Board of Prison Terms pursuant to this paragraph, then the Board of Prison Terms shall order a further examination by two independent professionals, as provided for in Section 2978.

(3) Only if both independent professionals who evaluate the prisoner pursuant to paragraph (2) concur with the chief psychiatrist's certification of the issues described in paragraph (2), shall this subdivision be applicable to the prisoner. The professionals appointed pursuant to Section 2978 shall inform the prisoner that the purpose of their examination is not treatment but to determine if the prisoner meets certain criteria to be involuntarily treated as a mentally disordered offender. It is not required that the prisoner appreciate or understand that information.

(e) The crime referred to in subdivision (b) meets both of the following criteria:

(1) The defendant received a determinate sentence pursuant to Section 1170 for the crime.

(2) The crime is one of the following:

(A) Voluntary manslaughter.

(B) Mayhem.

(C) Kidnapping in violation of Section 207.

(D) Any robbery wherein it was charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(E) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of the carjacking.

(F) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(G) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(H) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(I) Lewd acts on a child under the age of 14 years in violation of Section 288.

(J) Continuous sexual abuse in violation of Section 288.5.

(K) The offense described in subdivision (a) of Section 289 where the act was accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(L) Arson in violation of subdivision (a) of Section 451, or arson

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in violation of any other provision of Section 451 or in violation of Section 455 where the act posed a substantial danger of physical harm to others.

(M) Any felony in which the defendant used a firearm which use was charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.

(N) A violation of Section 12308.

(O) Attempted murder.

(P) A crime not enumerated in subparagraphs (A) to (O), inclusive, in which the prisoner used force or violence, or caused serious bodily injury as defined in paragraph (4) of subdivision (f) of Section 243.

(Q) A crime in which the perpetrator expressly or impliedly threatened another with the use of force or violence likely to produce substantial physical harm in such a manner that a reasonable person would believe and expect that the force or violence would be used. For purposes of this subparagraph, substantial physical harm shall not require proof that the threatened act was likely to cause great or serious bodily injury.

(f) As used in this chapter, "substantial danger of physical harm" does not require proof of a recent overt act.

CHAPTER 858

An act to amend Sections 2960 and 2970 of, and to add Sections 2962, 2964, 2966, 2968, 2972, 2974, 2976, 2978, and 2980 to, the Penal Code, relating to mentally disordered offenders.

[Approved by Governor September 16, 1986. Filed with Secretary of State September 17, 1986.]

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

SECTION 1. Section 2960 of the Penal Code is amended to read:
2960. The Legislature finds that there are prisoners who have a treatable, severe mental disorder that was one of the causes of, or was an aggravating factor in the commission of the crime for which they were incarcerated. Secondly, the Legislature finds that if the severe mental disorders of those prisoners are not in remission or cannot be kept in remission at the time of their parole or upon termination of parole, there is a danger to society, and the state has a compelling interest in protecting the public. Thirdly, the Legislature finds that in order to protect the public from those persons it is necessary to provide mental health treatment until the severe mental disorder which was one of the causes of or was an aggravating factor in the person's prior criminal behavior is in remission and can be kept in remission.

The Legislature further finds and declares the Department of Corrections should evaluate each prisoner for severe mental disorders during the first year of the prisoner's sentence, and that severely mentally disordered prisoners should be provided with an appropriate level of mental health treatment while in prison and when returned to the community.

SEC. 2. Section 2962 is added to the Penal Code; 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 Mental Health, and the State Department of Mental Health shall provide the necessary treatment:

(a) The prisoner has a severe mental disorder that is not in remission or cannot be kept in remission without treatment. The term "severe mental disorder" means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission in the absence of treatment is unlikely. The term "severe mental disorder" as used in this section does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances. The term "remission" means a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or

psychosocial support. A person "cannot be kept in remission without treatment" if during the year prior to the question being before the Board of Prison Terms or a trial court, he or she has been in remission and he or she has been physically violent, except in self-defense, or he or she has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, or he or she has intentionally caused property damage, or he or she has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan.

(b) The severe mental disorder was one of the causes of or was an aggravating factor in the commission of a crime for which the prisoner was sentenced to prison.

(c) The prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release.

(d) Prior to release on parole the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of Mental Health have evaluated the prisoner at a facility of the Department of Corrections, and a chief psychiatrist of the Department of Corrections has certified to the Board of Prison Terms that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, and that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior. For prisoners being treated by the State Department of Mental Health pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections, and the evaluation shall be done at a state hospital by the person at the state hospital in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections.

If the professionals doing the evaluation do not concur that (1) the prisoner has a severe mental disorder, or (2) that the disorder is not in remission or cannot be kept in remission without treatment, or (3) that the severe mental disorder was a cause of, or aggravated the prisoner's criminal behavior, and a chief psychiatrist has certified the prisoner to the Board of Prison Terms pursuant to this paragraph, then the Board of Prison Terms shall order a further examination by two independent professionals, as provided for in Section 2978. Only if both independent professionals concur with the chief psychiatrist's certification, shall the provisions of this subdivision be applicable to the prisoner.

(e) The crime referred to in subdivision (b) was a crime in which the prisoner used force or violence, or caused serious bodily injury as defined in paragraph (5) of subdivision (e) of Section 243.

SEC. 3. Section 2964 is added to the Penal Code, to read:

2964. (a) The treatment required by Section 2962 shall be

inpatient unless the State Department of Mental Health certifies to the Board of Prison Terms that there is reasonable cause to believe the parolee can be safely and effectively treated on an outpatient basis, in which case the Board of Prison Terms shall permit the State Department of Mental Health to place the parolee in an outpatient treatment program specified by the State Department of Mental Health. Any prisoner who is to be required to accept treatment pursuant to Section 2962 shall be informed in writing of his or her right to request a hearing pursuant to Section 2966. Prior to placing a parolee in a local outpatient program, the State Department of Mental Health shall consult with the local outpatient program as to the appropriate treatment plan. Notwithstanding any other provision of law, a parolee ordered to have outpatient treatment pursuant to this section may be placed in an outpatient treatment program used to provide outpatient treatment under Title 15 (commencing with Section 1600) of Part 2, but the procedural provisions of Title 15 shall not apply. The director of an outpatient program used to provide treatment under Title 15 in which a parolee is placed may place the parolee in a secure mental health facility if the parolee can no longer be safely or effectively treated in the outpatient program, and until the parolee can be safely and effectively treated in the program. Within 15 days after placement in a secure facility the State Department of Mental Health shall conduct a hearing on whether the parolee can be safely and effectively treated in the program. Before deciding to seek revocation of the parole of a parolee receiving mental health treatment pursuant to Section 2962, and return him or her to prison, the parole officer shall consult with the director of the parolee's outpatient program.

(b) If the State Department of Mental Health has not placed a parolee on outpatient treatment within 60 days after receiving custody of the parolee or after parole is continued pursuant to Section 3001, the parolee may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing to determine whether the prisoner shall be treated as an inpatient or an outpatient. At the hearing, the burden shall be on the State Department of Mental Health to establish that the prisoner requires inpatient treatment as described in this subdivision. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in Section 2978.

SEC. 4. Section 2966 is added to the Penal Code, to read:

2966. (a) A prisoner may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing if so requested, for the purpose of proving that the prisoner meets the criteria in Section 2962. At the hearing the burden of proof shall be on the person or agency who certified the prisoner under subdivision (d) of Section 2962. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two

independent professionals as provided for in Section 2978. The prisoner shall be informed at the hearing of his or her right to request a trial pursuant to subdivision (b). The Board of Prison Terms shall provide a prisoner who requests a trial a petition form and instructions for filing the petition.

(b) A prisoner who disagrees with the determination of the Board of Prison Terms that he or she meets the criteria of Section 2962, may file in the superior court of the county in which he or she is incarcerated or is being treated a petition for a hearing on whether he or she meets the criteria of Section 2962. The court shall conduct a hearing on the petition within 60 calendar days after the petition is filed, unless either time is waived by the petitioner or his counsel, or good cause is shown. The order of the Board of Prison Terms shall be in effect until the completion of the court proceedings. The court shall advise the petitioner of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the petitioner shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing; however, in order to reduce costs, the rules of criminal discovery, as well as civil discovery, shall be applicable. The standard of proof shall be beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney.

(c) If the Board of Prison Terms continues a parolee's mental health treatment under Section 2962 when they continue the parolee's parole under Section 3001, this section shall be applicable for the purpose of determining whether the parolee meets the criteria of Section 2962.

SEC. 5. Section 2968 is added to the Penal Code, to read:

2968. If the prisoner's severe mental disorder is put into remission during the parole period, and can be kept in remission, the Director of Mental Health shall notify the Board of Prison Terms and the State Department of Mental Health shall discontinue treating the parolee.

SEC. 6. Section 2970 of the Penal Code is amended to read:

2970. Not later than 180 days prior to the termination of parole, or release from prison if the prisoner refused to agree to treatment as a condition of parole as required by Section 2962, unless good cause is shown for the reduction of that 180-day period, if the prisoner's severe mental disorder is not in remission or cannot be kept in remission without treatment, the medical director of the state hospital which is treating the parolee, or the county mental health director in charge of the parolee's outpatient program, or the Director of Corrections shall submit to the district attorney of the county in which the parolee is receiving outpatient treatment, or for those in prison or in a state mental hospital the district attorney of the county of commitment, his or her written evaluation on remission. If requested by the district attorney, the written evaluation shall be accompanied by supporting affidavits. The

district attorney may then file a petition with the superior court for continued involuntary treatment for one year. The petition shall state the reasons necessitating the continued treatment, with accompanying affidavits specifying the conditions in Section 2962 and that treatment during the parole period, if any, has been continuously provided by the State Department of Mental Health either in a state hospital or in an outpatient program. The petition shall also specify why the severe mental disorder is not in remission or cannot be kept in remission if the person's treatment is not continued.

SEC. 7. Section 2972 is added to the Penal Code, to read:

2972. (a) The court shall conduct a hearing on the petition under Section 2970 for continued treatment. The court shall advise the person of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the person shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing, however, in order to reduce costs the rules of criminal discovery, as well as civil discovery, shall be applicable. The need for continued treatment shall be proven beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney. The trial shall commence no later than 30 calendar days prior to the time the person would otherwise have been released, unless the time is waived by the person or unless good cause is shown.

(b) The people shall be represented by the district attorney. If the person is indigent, the county public defender shall be appointed.

(c) If the court or jury finds that the patient is a person described in Section 2962, and his or her severe mental disorder is not in remission or cannot be kept in remission without treatment, the court shall order the patient recommitted to the facility in which the patient was confined at the time the petition was filed, or recommitted to the outpatient program in which he or she was being treated at the time the petition was filed, or committed to the State Department of Mental Health if the person was in prison. The commitment shall be for a period of one year from the date of termination of parole or a previous commitment or the scheduled date of release from prison as specified in Section 2970.

(d) A person shall be released on outpatient status if the committing court finds that there is reasonable cause to believe that the committed person can be safely and effectively treated on an outpatient basis. Except as provided in this subdivision, the provisions of Title 15 (commencing with Section 1600) of Part 2, shall apply to persons placed on outpatient status pursuant to this paragraph. The standard for revocation under Section 1609 shall be that the person cannot be safely and effectively treated on an outpatient basis.

(e) Prior to the termination of a commitment under this section, a petition for recommitment may be filed to determine whether the patient remains a person described in Section 2962 whose severe

mental disorder is not in remission or cannot be kept in remission without treatment. The recommitment proceeding shall be conducted in accordance with the provisions of this section.

(f) Any commitment under this article places an affirmative obligation on the treatment facility to provide treatment for the underlying causes of the person's mental disorder.

(g) Except as provided in this subdivision, the person committed shall be considered to be an involuntary mental health patient and he or she shall be entitled to those rights set forth in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code. Commencing January 1, 1986, the State Department of Mental Health may adopt regulations to modify those rights as is necessary in order to provide for the reasonable security of the inpatient facility in which the patient is being held. This subdivision and the regulations adopted pursuant thereto shall become operative on January 1, 1987, except that regulations may be adopted prior to that date.

SEC. 8. Section 2974 is added to the Penal Code, to read:

2974. Before releasing any inmate or terminating supervision of any parolee who is a danger to self or others, or gravely disabled as a result of mental disorder, and who does not come within the provisions of Section 2962, the Director of Corrections may, upon probable cause, place, or cause to be placed, the person in a state hospital pursuant to the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

SEC. 9. Section 2976 is added to the Penal Code, to read:

2976. (a) The cost of inpatient or outpatient treatment under this article shall be a state expense while the person is under the jurisdiction of the Department of Corrections.

(b) Any person placed outside of a facility of the Department of Corrections for the purposes of inpatient treatment under this article shall not be deemed to be released from imprisonment or from the custody of the Department of Corrections prior to the expiration of the maximum term of imprisonment of the person.

SEC. 10. Section 2978 is added to the Penal Code, to read:

2978. (a) Any independent professionals appointed by the Board of Prison Terms for purposes of this article shall not be state government employees; shall have at least five years of experience in the diagnosis and treatment of mental disorders; and shall include psychiatrists, and licensed psychologists who have a doctoral degree in psychology.

(b) On July 1 of each year the Department of Corrections and the State Department of Mental Health shall submit to the Board of Prison Terms a list of 20 or more independent professionals on which both departments concur. The professionals shall not be state government employees and shall have at least five years of experience in the diagnosis and treatment of mental disorders and shall include psychiatrists and licensed psychologists who have a

doctoral degree in psychology. For purposes of this article, when the Board of Prison Terms receives the list, they shall only appoint independent professionals from the list. The list shall not be binding on the Board of Prison Terms until they have received it, and shall not be binding after June 30 following receipt of the list.

SEC. 11. Section 2980 is added to the Penal Code, to read:

2980. This article applies to persons incarcerated before, as well as after, January 1, 1986.

CHAPTER 859

An act to amend Section 40000.7 of, and to add Section 4463.5 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 16, 1986. Filed with Secretary of State September 17, 1986.]

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

SECTION 1. Section 4463.5 is added to the Vehicle Code, to read:

4463.5. (a) No person shall manufacture or sell a decorative or facsimile license plate of a size substantially similar to the license plate issued by the department.

(b) Notwithstanding subdivision (a), the director may authorize the manufacture and sale of decorative or facsimile license plates for special events or media productions.

(c) A violation of this section is a misdemeanor punishable by a fine of not less than five hundred dollars (\$500).

SEC. 2. Section 40000.7 of the Vehicle Code is amended to read: 40000.7. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Section 2416, relating to regulations for emergency vehicles.

(b) Section 2800, relating to failure to obey an officer's lawful order or submit to a lawful inspection.

(c) Section 2800.1, relating to fleeing from a peace officer.

(d) Section 2801, relating to failure to obey a fireman's lawful order.

(e) Section 2803, relating to unlawful vehicle or load.

(f) Section 2813, relating to stopping for inspection.

(g) Subdivision (b) of Section 4461 and subdivisions (b) and (c) of Section 4463, relating to disabled person placards.

(h) Section 4463.5, relating to deceptive or facsimile license plates.

(i) Section 5500, relating to the surrender of registration documents and license plates before dismantling may begin.

(j) Section 5753, relating to delivery of certificates of ownership and registration when committed by a dealer or any person while a dealer within the preceding 12 months.

act is in accordance with the request of a local agency which desired legislative authority to carry out the program specified in this act. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for the continuation of the prohibition against requiring prior authorization from the State Department of Health Services for the provision of portable X-ray services provided in skilled nursing or intermediate care facilities under the Medi-Cal program, and in order to apply the provisions of this act to the special commission in San Mateo County prior to the end of the 1987 calendar year, it is necessary that this act go into immediate effect.

CHAPTER 687

An act to amend Section 1017 of the Evidence Code, and to amend Sections 1615, 1617, 1618, 1619, 1620, 2962, 2966, 2972, and 2978 of, and to add Section 2981 to, the Penal Code, relating to mentally disordered offenders.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 17, 1987.]

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

SECTION 1. Section 1017 of the Evidence Code is amended to read:

1017. (a) There is no privilege under this article if the psychotherapist is appointed by order of a court to examine the patient, but this exception does not apply where the psychotherapist is appointed by order of the court upon the request of the lawyer for the defendant in a criminal proceeding in order to provide the lawyer with information needed so that he or she may advise the defendant whether to enter or withdraw a plea based on insanity or to present a defense based on his or her mental or emotional condition.

(b) There is no privilege under this article if the psychotherapist is appointed by the Board of Prison Terms to examine a patient pursuant to the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

SEC. 2. Section 1615 of the Penal Code is amended to read:

1615. Pursuant to Section 5709.8 of the Welfare and Institutions Code, the State Department of Mental Health shall be responsible for the community treatment and supervision of judicially committed patients. These services shall be available on a county or regional basis. The department may provide these services directly or through contract with private providers or counties. The program

or programs through which these services are provided shall be known as the Mental Health Conditional Release Program.

The department shall contact all county mental health programs by January 1, 1986, to determine their interest in providing an appropriate level of supervision and treatment of judicially committed patients at reasonable cost. County mental health agencies may agree or refuse to operate such a program.

The State Department of Mental Health shall ensure consistent data gathering and program standards for use statewide by the Mental Health Conditional Release Program.

SEC. 3. Section 1617 of the Penal Code is amended to read:

1617. The State Department of Mental Health shall research the demographic profiles and other related information pertaining to persons receiving supervision and treatment in the Mental Health Conditional Release Program. An evaluation of the program shall determine its effectiveness in successfully reintegrating these persons into society after release from state institutions. This evaluation of program effectiveness shall include, but not be limited to, a determination of the rates of reoffense while these persons are served by the program and after their discharge. This evaluation shall also address the effectiveness of the various treatment components of the program and their intensity.

The State Department of Mental Health may contract with an independent research agency to perform this research and evaluation project. Any independent research agency conducting this research shall consult with the Forensic Mental Health Association concerning the development of the research and evaluation design.

SEC. 4. Section 1618 of the Penal Code is amended to read:

1618. The administrators and the supervision and treatment staff of the Mental Health Conditional Release Program shall not be held criminally or civilly liable for any criminal acts committed by the persons on parole or judicial commitment status who receive supervision or treatment. This waiver of liability shall apply to employees of the State Department of Mental Health and the agencies or persons under contract to this department to provide supervision or treatment to mentally ill parolees or persons under judicial commitment.

SEC. 5. Section 1619 of the Penal Code is amended to read:

1619. The Department of Justice shall automate the criminal histories of all persons treated in the Mental Health Conditional Release Program, as well as all persons committed as not guilty by reason of insanity pursuant to Section 1026, incompetent to stand trial pursuant to Section 1370 or 1370.2, any person currently under commitment as a mentally disordered sex offender, and persons treated pursuant to Section 1364 or 2684 or Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3.

SEC. 6. Section 1620 of the Penal Code is amended to read:

1620. The Department of Justice shall provide mental health

agencies providing treatment to patients pursuant to Sections 1600 to 1610, inclusive, or pursuant to Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3, with access to criminal histories of those mentally ill offenders who are receiving treatment and supervision. Treatment and supervision staff who have access to these criminal histories shall maintain the confidentiality of the information and shall sign a statement to be developed by the Department of Justice which informs them of this obligation.

SEC. 7. 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 Mental Health, and the State Department of Mental Health shall provide the necessary treatment:

(a) The prisoner has a severe mental disorder that is not in remission or cannot be kept in remission without treatment. The term "severe mental disorder" means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission in the absence of treatment is unlikely. The term "severe mental disorder" as used in this section does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances. The term "remission" means a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support. A person "cannot be kept in remission without treatment" if during the year prior to the question being before the Board of Prison Terms or a trial court, he or she has been in remission and he or she has been physically violent, except in self-defense, or he or she has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, or he or she has intentionally caused property damage, or he or she has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan.

(b) The severe mental disorder was one of the causes of or was an aggravating factor in the commission of a crime for which the prisoner was sentenced to prison.

(c) The prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release.

(d) Prior to release on parole the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of Mental Health have evaluated the prisoner at a facility of the Department of Corrections, and a chief psychiatrist of the Department of Corrections has certified to the Board of Prison

Terms that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior, that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to his or her parole release day, and that the prisoner used force or violence or caused serious bodily injury in committing the crime referred to in subdivision (b). For prisoners being treated by the State Department of Mental Health pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections, and the evaluation shall be done at a state hospital by the person at the state hospital in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections.

If the professionals doing the evaluation do not concur that (1) the prisoner has a severe mental disorder, or (2) that the disorder is not in remission or cannot be kept in remission without treatment, or (3) that the severe mental disorder was a cause of, or aggravated the prisoner's criminal behavior, and a chief psychiatrist has certified the prisoner to the Board of Prison Terms pursuant to this paragraph, then the Board of Prison Terms shall order a further examination by two independent professionals, as provided for in Section 2978. Only if both independent professionals concur with the chief psychiatrist's certification, shall the provisions of this subdivision be applicable to the prisoner. The professionals appointed pursuant to Section 2978 shall inform the prisoner that the purpose of their examination is not treatment but to determine if the prisoner meets the criteria to be involuntarily treated as a mentally disordered offender. It is not required that the prisoner appreciate or understand such information.

(e) The crime referred to in subdivision (b) was a crime in which the prisoner used force or violence, or caused serious bodily injury as defined in paragraph (5) of subdivision (e) of Section 243.

SEC. 8. Section 2966 of the Penal Code is amended to read:

2966. (a) A prisoner may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing if so requested, for the purpose of proving that the prisoner meets the criteria in Section 2962. At the hearing the burden of proof shall be on the person or agency who certified the prisoner under subdivision (d) of Section 2962. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in Section 2978. The prisoner shall be informed at the hearing of his or her right to request a trial pursuant to subdivision (b). The Board of Prison Terms shall provide a prisoner who requests a trial, a petition form and instructions for filing the petition.

(b) A prisoner who disagrees with the determination of the Board of Prison Terms that he or she meets the criteria of Section 2962, may file in the superior court of the county in which he or she is

incarcerated or is being treated a petition for a hearing on whether he or she, as of the date of the Board of Prison Terms hearing, met the criteria of Section 2962. The court shall conduct a hearing on the petition within 60 calendar days after the petition is filed, unless either time is waived by the petitioner or his or her counsel, or good cause is shown. The order of the Board of Prison Terms shall be in effect until the completion of the court proceedings. The court shall advise the petitioner of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the petitioner shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing; however, in order to reduce costs, the rules of criminal discovery, as well as civil discovery, shall be applicable. The standard of proof shall be beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney.

(c) If the Board of Prison Terms continues a parolee's mental health treatment under Section 2962 when they continue the parolee's parole under Section 3001, this section shall be applicable for the purpose of determining whether the parolee meets the criteria of Section 2962.

SEC. 9. Section 2972 of the Penal Code is amended to read:

2972. (a) The court shall conduct a hearing on the petition under Section 2970 for continued treatment. The court shall advise the person of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the person shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing, however, in order to reduce costs the rules of criminal discovery, as well as civil discovery, shall be applicable. The need for continued treatment shall be proven beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney. The trial shall commence no later than 30 calendar days prior to the time the person would otherwise have been released, unless the time is waived by the person or unless good cause is shown.

(b) The people shall be represented by the district attorney. If the person is indigent, the county public defender shall be appointed.

(c) If the court or jury finds that the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment, the court shall order the patient recommitted to the facility in which the patient was confined at the time the petition was filed, or recommitted to the outpatient program in which he or she was being treated at the time the petition was filed, or committed to the State Department of Mental Health if the person was in prison. The commitment shall be for a period of one year from the date of termination of parole or a previous commitment or the scheduled date of release from prison as specified in Section 2970.

(d) A person shall be released on outpatient status if the committing court finds that there is reasonable cause to believe that

the committed person can be safely and effectively treated on an outpatient basis. Except as provided in this subdivision, the provisions of Title 15 (commencing with Section 1600) of Part 2, shall apply to persons placed on outpatient status pursuant to this paragraph. The standard for revocation under Section 1609 shall be that the person cannot be safely and effectively treated on an outpatient basis.

(e) Prior to the termination of a commitment under this section, a petition for recommitment may be filed to determine whether the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment. The recommitment proceeding shall be conducted in accordance with the provisions of this section.

(f) Any commitment under this article places an affirmative obligation on the treatment facility to provide treatment for the underlying causes of the person's mental disorder.

(g) Except as provided in this subdivision, the person committed shall be considered to be an involuntary mental health patient and he or she shall be entitled to those rights set forth in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code. Commencing January 1, 1986, the State Department of Mental Health may adopt regulations to modify those rights as is necessary in order to provide for the reasonable security of the inpatient facility in which the patient is being held. This subdivision and the regulations adopted pursuant thereto shall become operative on January 1, 1987, except that regulations may be adopted prior to that date.

SEC. 10. Section 2978 of the Penal Code is amended to read:

2978. (a) Any independent professionals appointed by the Board of Prison Terms for purposes of this article shall not be state government employees; shall have at least five years of experience in the diagnosis and treatment of mental disorders; and shall include psychiatrists, and licensed psychologists who have a doctoral degree in psychology.

(b) On July 1 of each year the Department of Corrections and the State Department of Mental Health shall submit to the Board of Prison Terms a list of 20 or more independent professionals on which both departments concur. The professionals shall not be state government employees and shall have at least five years of experience in the diagnosis and treatment of mental disorders and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. For purposes of this article, when the Board of Prison Terms receives the list, they shall only appoint independent professionals from the list. The list shall not be binding on the Board of Prison Terms until they have received it, and shall not be binding after June 30 following receipt of the list.

SEC. 11. Section 2981 is added to the Penal Code, to read:

2981. For the purpose of proving the fact that a prisoner has received 90 days or more of treatment within the year prior to the prisoner's parole or release, the records or copies of records of any

state penitentiary, county jail, federal penitentiary, or state hospital in which that person has been confined, when the records or copies thereof have been certified by the official custodian of those records, may be admitted as evidence.

CHAPTER 688

An act to amend Sections 6140, 6140.1, and 6140.3 of, and to add Section 6032 to, the Business and Professions Code, relating to the State Bar of California.

[Approved by Governor September 16, 1987. Filed with Secretary of State September 17, 1987.]

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

SECTION 1. Section 6032 is added to the Business and Professions Code, to read:

6032. Subject to the approval of the Committees on Judiciary of each house of the Legislature, the board shall contract with an independent expert for the purpose of conducting a comprehensive study of the State Bar's affirmative action program with regard to its employees. A final report shall be submitted to each of the Committees on Judiciary no later than September 1, 1988. The amount expended pursuant to the contract shall not exceed twenty-five thousand dollars (\$25,000).

SEC. 2. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual membership fee for 1988 as follows:

(1) For active members who have been admitted to the practice of law in this state for three years or longer preceding the first day of February of the year for which the fee is payable, at the sum of two hundred fifteen dollars (\$215).

(2) For active members who have been admitted to the practice of law in this state for less than three years but more than one year preceding the first day of February of the year for which the fee is payable, at the sum of one hundred forty-seven dollars (\$147).

(3) For active members who have been admitted to the practice of law in this state during, or for less than one year preceding the first day of February of, the year for which the fee is payable, at a sum not exceeding one hundred sixteen dollars (\$116).

(b) The annual membership fee for active members is payable on or before the first day of February of each year.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 3. Section 6140.1 of the Business and Professions Code is

CHAPTER 658

(Senate Bill No. 538)

An act to amend Sections 2966 and 2970 of the Penal Code, relating to mentally disordered offenders.

[Approved by Governor August 27, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

SB 538, McCorquodale. Mentally disordered offenders.

Existing law authorizes a prisoner to request a hearing before the Board of Prison Terms for purposes of proving that the prisoner meets specified criteria for treatment by the State Department of Mental Health as a condition of parole. Existing law provides that if the prisoner disagrees with the determination of the board, he or she may file a petition for a hearing in the superior court, as specified, on whether the prisoner, as of the date of the Board of Prison Terms hearing, has met the prescribed criteria for treatment by the State Department of Mental Health. If the Board of Prison Terms continues a parolee's mental health treatment when it continues his or her parole under specified provisions, existing law provides that these provisions shall be applicable for the purpose of determining whether the parolee meets the criteria for continued treatment as a condition of parole.

This bill would provide instead that, if the Board of Prison Terms continues a parolee's mental health treatment under those specified provisions, the above procedures shall only be applicable for the purpose of determining if the parolee has a severe mental disorder and whether the parolee's severe mental disorder is not in remission or cannot be kept in remission without treatment.

Existing law, as specified above, provides for the required treatment of certain convicted felons with a severe mental disorder as a condition of parole, and for their continued treatment upon termination of parole or release from prison. Existing law also provides that if the prisoner's severe mental disorder is not in remission or cannot be kept in remission without treatment, the director of the mental health facility or the Director of Corrections shall submit his or her evaluation on remission to the district attorney. The district attorney may file a petition for the continued treatment of the person for a period of one year, as specified. The petition shall state the reasons necessitating the continued treatment and be accompanied by affidavits stating specified conditions and that treatment during the parole period, if any, has continuously been provided by the State Department of Mental Health, as specified.

This bill would delete the requirement that the petition state the reasons necessitating the continued treatment of the person. It would require the petition be accompanied by an affidavit specifying certain conditions including a statement that the treatment was provided by the State Department of Mental Health, as specified.

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

SECTION 1. Section 2966 of the Penal Code is amended to read:

§ 2966. (a) A prisoner may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing if so requested, for the purpose of proving that the

proof shall be on the person or agency who certified the prisoner under subdivision (d) of Section 2962. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in Section 2978. The prisoner shall be informed at the hearing of his or her right to request a trial pursuant to subdivision (b). The Board of Prison Terms shall provide a prisoner who requests a trial, a petition form and instructions for filing the petition.

(b) A prisoner who disagrees with the determination of the Board of Prison Terms that he or she meets the criteria of Section 2962, may file in the superior court of the county in which he or she is incarcerated or is being treated a petition for a hearing on whether he or she, as of the date of the Board of Prison Terms hearing, met the criteria of Section 2962. The court shall conduct a hearing on the petition within 60 calendar days after the petition is filed, unless either time is waived by the petitioner or his or her counsel, or good cause is shown. The order of the Board of Prison Terms shall be in effect until the completion of the court proceedings. The court shall advise the petitioner of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the petitioner shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing; however, in order to reduce costs, the rules of criminal discovery, as well as civil discovery, shall be applicable. The standard of proof shall be beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney.

(c) If the Board of Prison Terms continues a parolee's mental health treatment under Section 2962 when they continue the parolee's parole under Section 3001, the procedures of this section shall only be applicable for the purpose of determining if the parolee has a severe mental disorder, and whether the parolee's severe mental disorder is not in remission or cannot be kept in remission without treatment.

SEC. 2. Section 2970 of the Penal Code is amended to read:

§ 2970. Not later than 180 days prior to the termination of parole, or release from prison if the prisoner refused to agree to treatment as a condition of parole as required by Section 2962, unless good cause is shown for the reduction of that 180-day period, if the prisoner's severe mental disorder is not in remission or cannot be kept in remission without treatment, the medical director of the state hospital which is treating the parolee, or the county mental health director in charge of the parolee's outpatient program, or the Director of Corrections shall submit to the district attorney of the county in which the parolee is receiving outpatient treatment or for those in prison or in a state mental hospital the district attorney of the county of commitment, his or her written evaluation on remission. If requested by the district attorney, the written evaluation shall be accompanied by supporting affidavits. The district attorney may then file a petition with the superior court for continued involuntary treatment for one year. The petition shall be accompanied by affidavits specifying that treatment, while the prisoner was released from prison on parole, has been continuously provided by the State Department of Mental Health either in a state hospital or in an outpatient program. The petition shall also specify whether the prisoner has a severe mental disorder and why the severe mental disorder is not in remission or cannot be kept in remission if the person's treatment is not continued.

EXPLANATORY NOTES SENATE BILL 538:

Pen C § 2966. Amended subd (c) By substituting (1) "the procedures of this section shall only" for "this section shall" after "Section 3001,,"; and (2) "if the parolee has a severe mental disorder, and whether the parolee's severe mental disorder is not in remission or cannot be kept in remission without treatment" for "whether the parolee meets the criteria of Section 2962".

section 7
Exhibit E

Pen C § 2970: (1) Deleted the comma after "outpatient treatment" in the first sentence; (2) substituted "be accompanied by affidavits specifying that treatment, while the prisoner was released from prison on parole" for "state the reasons necessitating the continued treatment, with accompanying affidavits specifying the conditions in Section 2962 and that treatment during the parole period, if any" in the fourth sentence; and (3) added "whether the prisoner has a severe mental disorder and" in the last sentence.

CHAPTER 228

An act to amend Sections 2962, 2966, 2970, 2972, and 2980 of the Penal Code, relating to prisoners, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 27, 1989. Filed with Secretary of State July 27, 1989.]

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

SECTION 1. 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 Mental Health, and the State Department of Mental Health shall provide the necessary treatment:

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

The term "severe mental disorder" means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. The term "severe mental disorder" as used in this section does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances.

The term "remission" means a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support. A person "cannot be kept in remission without treatment" if during the year prior to the question being before the Board of Prison Terms or a trial court, he or she has been in remission and he or she has been physically violent, except in self-defense, or he or she has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, or he or she has intentionally caused property damage, or he or she has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan.

(b) The severe mental disorder was one of the causes of or was an aggravating factor in the commission of a crime for which the prisoner was sentenced to prison.

(c) The prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release.

(d) (1) Prior to release on parole, the person in charge of treating

the prisoner and a practicing psychiatrist or psychologist from the State Department of Mental Health have evaluated the prisoner at a facility of the Department of Corrections, and a chief psychiatrist of the Department of Corrections has certified to the Board of Prison Terms that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior, that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to his or her parole release day, that the prisoner used force or violence or caused serious bodily injury in committing the crime referred to in subdivision (b), and that by reason of his or her severe mental disorder the prisoner represents a substantial danger of physical harm to others. For prisoners being treated by the State Department of Mental Health pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections, and the evaluation shall be done at a state hospital by the person at the state hospital in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections.

(2) If the professionals doing the evaluation pursuant to paragraph (1) do not concur that (1) the prisoner has a severe mental disorder, or (2) that the disorder is not in remission or cannot be kept in remission without treatment, or (3) that the severe mental disorder was a cause of, or aggravated the prisoner's criminal behavior, and a chief psychiatrist has certified the prisoner to the Board of Prison Terms pursuant to this paragraph, then the Board of Prison Terms shall order a further examination by two independent professionals, as provided for in Section 2978.

(3) Only if both independent professionals who evaluate the prisoner pursuant to paragraph (2) concur with the chief psychiatrist's certification of the issues described in paragraph (2), shall the provisions of this subdivision be applicable to the prisoner. The professionals appointed pursuant to Section 2978 shall inform the prisoner that the purpose of their examination is not treatment but to determine if the prisoner meets certain criteria to be involuntarily treated as a mentally disordered offender. It is not required that the prisoner appreciate or understand that information.

(e) The crime referred to in subdivision (b) was a crime in which the prisoner used force or violence, or caused serious bodily injury as defined in paragraph (5) of subdivision (e) of Section 243.

(f) As used in this chapter, "substantial danger of physical harm" does not require proof of a recent overt act.

SEC. 2. Section 2966 of the Penal Code is amended to read:

2966. (a) A prisoner may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing if so requested, for the purpose of proving that the prisoner meets the criteria in Section 2962. At the hearing, the burden of proof shall be on the person or agency who certified the prisoner under subdivision (d)

of Section 2962. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in Section 2978. The prisoner shall be informed at the hearing of his or her right to request a trial pursuant to subdivision (b). The Board of Prison Terms shall provide a prisoner who requests a trial, a petition form and instructions for filing the petition.

(b) A prisoner who disagrees with the determination of the Board of Prison Terms that he or she meets the criteria of Section 2962, may file in the superior court of the county in which he or she is incarcerated or is being treated a petition for a hearing on whether he or she, as of the date of the Board of Prison Terms hearing, met the criteria of Section 2962. The court shall conduct a hearing on the petition within 60 calendar days after the petition is filed, unless either time is waived by the petitioner or his or her counsel, or good cause is shown. The order of the Board of Prison Terms shall be in effect until the completion of the court proceedings. The court shall advise the petitioner of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the petitioner shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing; however, in order to reduce costs, the rules of criminal discovery, as well as civil discovery, shall be applicable. The standard of proof shall be beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney.

(c) If the Board of Prison Terms continues a parolee's mental health treatment under Section 2962 when it continues the parolee's parole under Section 3001, the procedures of this section shall only be applicable for the purpose of determining if the parolee has a severe mental disorder, whether the parolee's severe mental disorder is not in remission or cannot be kept in remission without treatment, and whether by reason of his or her severe mental disorder, the parolee represents a substantial danger of physical harm to others.

SEC. 3. Section 2970 of the Penal Code is amended to read:

2970. Not later than 180 days prior to the termination of parole, or release from prison if the prisoner refused to agree to treatment as a condition of parole as required by Section 2962, unless good cause is shown for the reduction of that 180-day period, if the prisoner's severe mental disorder is not in remission or cannot be kept in remission without treatment, the medical director of the state hospital which is treating the parolee, or the county mental health director in charge of the parolee's outpatient program, or the Director of Corrections, shall submit to the district attorney of the county in which the parolee is receiving outpatient treatment, or for those in prison or in a state mental hospital, the district attorney of the county of commitment, his or her written evaluation on remission. If requested by the district attorney, the written

evaluation shall be accompanied by supporting affidavits. The district attorney may then file a petition with the superior court for continued involuntary treatment for one year. The petition shall be accompanied by affidavits specifying that treatment, while the prisoner was released from prison on parole, has been continuously provided by the State Department of Mental Health either in a state hospital or in an outpatient program. The petition shall also specify that the prisoner has a severe mental disorder, that the severe mental disorder is not in remission or cannot be kept in remission if the person's treatment is not continued, and that, by reason of his or her severe mental disorder, the prisoner represents a substantial danger of physical harm to others.

SEC. 4. Section 2972 of the Penal Code is amended to read:
2972. (a) The court shall conduct a hearing on the petition under Section 2970 for continued treatment. The court shall advise the person of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the person shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing, however, in order to reduce costs the rules of criminal discovery, as well as civil discovery, shall be applicable.

The standard of proof under this section shall be proof beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney. The trial shall commence no later than 30 calendar days prior to the time the person would otherwise have been released, unless the time is waived by the person or unless good cause is shown.

(b) The people shall be represented by the district attorney. If the person is indigent, the county public defender shall be appointed.

(c) If the court or jury finds that the patient has a severe mental disorder, that the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment; and that by reason of his or her severe mental disorder, the patient represents a substantial danger of physical harm to others; the court shall order the patient recommitted to the facility in which the patient was confined at the time the petition was filed; or recommitted to the outpatient program in which he or she was being treated at the time the petition was filed; or committed to the State Department of Mental Health if the person was in prison. The commitment shall be for a period of one year from the date of termination of parole or a previous commitment or the scheduled date of release from prison as specified in Section 2970.

(d) A person shall be released on outpatient status if the committing court finds that there is reasonable cause to believe that the committed person can be safely and effectively treated on an outpatient basis. Except as provided in this subdivision, the provisions of Title 15 (commencing with Section 1600) of Part 2, shall apply to persons placed on outpatient status pursuant to this paragraph. The standard for revocation under Section 1609 shall be

that the person cannot be safely and effectively treated on an outpatient basis.

(e) Prior to the termination of a commitment under this section, a petition for recommitment may be filed to determine whether the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment, and whether by reason of his or her severe mental disorder, the patient represents a substantial danger of physical harm to others. The recommitment proceeding shall be conducted in accordance with the provisions of this section.

(f) Any commitment under this article places an affirmative obligation on the treatment facility to provide treatment for the underlying causes of the person's mental disorder.

(g) Except as provided in this subdivision, the person committed shall be considered to be an involuntary mental health patient and he or she shall be entitled to those rights set forth in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code. Commencing January 1, 1986, the State Department of Mental Health may adopt regulations to modify those rights as is necessary in order to provide for the reasonable security of the inpatient facility in which the patient is being held. This subdivision and the regulations adopted pursuant thereto shall become operative on January 1, 1987, except that regulations may be adopted prior to that date.

SEC. 5. Section 2980 of the Penal Code is amended to read:

2980. This article applies to persons who committed their crimes on and after January 1, 1986.

SEC. 6. It is not the intent of the Legislature to directly or indirectly imply by this act that courts may not use the standard of evidence accepted by the court in *People v. Beard*, 173, Cal. App. 3d 1113, in cases arising under Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

SEC. 7. (a) The Department of Corrections and the State Department of Mental Health, in conjunction with the Board of Prison Terms, shall submit a report to the Legislature on or before September 30, 1990, on the following:

(1) A description of the disposition of cases of patients released from treatment under the mentally disordered offender program following the invalidation of that program by the Court of Appeal in *People v. Gibson* (204 Cal. App. 3d 1425), including discussion regarding any subsequent acts recorded by the Department of Justice, the State Department of Mental Health, and the Department of Corrections, to the extent resources are available.

(2) A description of the criteria used to select which prisoners are personally evaluated for possible treatment under the mentally disordered offender program, and the criteria used to determine which of those prisoners are to be treated under the program.

(b) The Department of Corrections and the State Department of Mental Health, in conjunction with the Board of Prison Terms, shall submit an annual report to the Legislature on the status of the

mentally disordered offender program on or before December 31, 1991, and on or before December 31 each year thereafter through 1996, which shall include all of the following:

(1) The following information on persons committed to the mentally disordered offender program on or after July 1, 1989, who have exhausted their rights under Section 2966 of the Penal Code.

(A) The duration of treatment for those patients selected for the mentally disordered program, including both inpatient and outpatient treatment.

(B) The number of mentally disordered offender patients returned to custody or to a hospital due to the commission of a new crime, to the extent this information is available from the Department of Justice, or due to parole revocation.

(C) The number of parole revocations of persons who have been treated previously under the mentally disordered offender program and the reasons for the revocations.

(D) The number of parole revocations for all parolees whose parole was revoked based upon psychiatric reasons pursuant to Section 2646 of Title 15 of the California Code of Regulations.

(E) Information regarding recidivism rates for criminal conduct by persons previously treated under the mentally disordered offender program to the extent this information is available from the Department of Justice.

(F) Any other information that would be useful to the Legislature in evaluating the performance of the mentally disordered offender program.

(2) A summary description of the number and disposition of cases of all prisoners who are personally clinically evaluated on and after July 1, 1989, by the Department of Corrections and the State Department of Mental Health for possible treatment under the mentally disordered offender program, including disposition of any hearing or court proceedings. The report also shall contain a brief explanation, as the departments deem appropriate, to explain the data.

(c) The Department of Corrections and the State Department of Mental Health, in conjunction with the Board of Prison Terms, shall provide a preliminary report to the Legislature on or before December 31, 1990, describing the report protocol they intend to use for the report required under subdivision (b) and any problems which they anticipate.

(d) The reports required under this section shall be submitted to the Assembly Committee on Public Safety and to the Senate Judiciary Committee.

(e) Notwithstanding any other provision of law, the Department of Justice, the Department of Corrections, the State Department of Mental Health, and the Board of Prison Terms shall make available any information required for purposes of this section. Any confidential information obtained pursuant to this subdivision may be used for purposes of preparing the reports required by this

section, but the information shall not be used in any way that discloses confidential information, nor shall that confidential information be used for any other purpose.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The Court of Appeal in *People v. Gibson* (204 Cal. App. 3d 1425) declared part of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code in violation of the equal protection clause of the United States Constitution because it does not require proof the person represents a substantial danger of physical harm to others by reason of his or her severe mental disorder. In order to keep the mentally disordered offender program in effect for those persons who committed their crimes on or after January 1, 1986, it is necessary that this act take effect immediately.

CHAPTER 229

An act to amend Sections 5651, 5661, and 5681 of the Business and Professions Code, relating to landscape architecture, and making an appropriation therefor.

[Approved by Governor July 27, 1989. Filed with
Secretary of State July 28, 1989.]

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

SECTION 1. Section 5651 of the Business and Professions Code is amended to read:

5651. (a) The board shall by means of examination, ascertain the professional qualifications of all applicants for licenses to practice landscape architecture in this state and shall issue a license to every person whom it finds to be qualified on payment of the initial license fee prescribed by this chapter.

(b) The examination shall consist of a written examination. The written examination may be waived by the board if the applicant (1) is licensed in a state and demonstrates to the board that he or she has passed the Uniform National Examination for Landscape Architects or is certified by the Council of Landscape Architects Registration Boards and has submitted proof of job experience equivalent to that which is required of California candidates and (2) has taken a written examination equivalent in scope and subject matter to the written examination last given in California as determined by the board, and has achieved a score on the out-of-state examination at least equal to the score required to pass the California written examination. The written examination shall include testing of the applicants knowledge of California plants and environmental conditions.

BILL NUMBER: SB 1918 CHAPTERED 09/21/94

CHAPTER 706

FILED WITH SECRETARY OF STATE SEPTEMBER 21, 1994

APPROVED BY GOVERNOR SEPTEMBER 20, 1994

PASSED THE SENATE AUGUST 29, 1994

PASSED THE ASSEMBLY AUGUST 25, 1994

AMENDED IN ASSEMBLY AUGUST 22, 1994

AMENDED IN ASSEMBLY JULY 7, 1994

INTRODUCED BY Senator Campbell

FEBRUARY 25, 1994

An act to amend Section 2966 of the Penal Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

SB 1918, Campbell. Prisoners: severe mental disorders.

Under existing law, a prisoner who disagrees with the determination of the Board of Prison Terms that he or she has a severe mental disorder that is not in remission or cannot be kept in remission without treatment, as defined, may file a petition in the superior court of the county in which he or she is incarcerated or is being treated for a hearing on whether he or she, as of the date of the Board of Prison Terms hearing, met the criteria of having a severe mental disorder that is not in remission or cannot be kept in remission without treatment. The court is required to conduct a hearing on the petition, as specified. The standard of proof is beyond a reasonable doubt, and if the trial is by jury, the jury is required to be unanimous in its verdict.

This bill would prohibit the court's consideration, at the hearing on the petition, of evidence offered for the purpose of proving the prisoner's behavior or mental status subsequent to the Board of Prison Terms hearing.

This bill would also provide that the court may, upon stipulation of the parties, receive in evidence the affidavit or declaration of any psychiatrist, psychologist, or other professional person who was involved in the certification and hearing process, or any professional person involved in the evaluation or treatment of the petitioner during the certification process, as specified.

This bill would also provide that if the court or jury reverses the determination of the Board of Prison Terms, the court shall stay the execution of the decision for 5 working days to allow for an orderly release of the prisoner.

CHAPTER 706

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2966 of the Penal Code is amended to read:

2966. (a) A prisoner may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing if so requested, for the purpose of proving that the prisoner meets the criteria in Section 2962. At the hearing, the burden of proof shall be on the person or agency who certified the prisoner under subdivision (d) of Section 2962. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in Section 2978. The prisoner shall be informed at the hearing of his or her right to request a trial pursuant to subdivision (b). The Board of Prison Terms shall provide a prisoner who requests a trial, a petition form and instructions for filing the petition.

(b) A prisoner who disagrees with the determination of the Board of Prison Terms that he or she meets the criteria of Section 2962, may file in the superior court of the county in which he or she is incarcerated or is being treated a petition for a hearing on whether he or she, as of the date of the Board of Prison Terms hearing, met the criteria of Section 2962. The court shall conduct a hearing on the petition within 60 calendar days after the petition is filed, unless either time is waived by the petitioner or his or her counsel, or good cause is shown.

Evidence offered for the purpose of proving the prisoner's behavior or mental status subsequent to the Board of Prison Terms hearing shall not be considered. The order of the Board of Prison Terms shall be in effect until the completion of the court proceedings. The court shall advise the petitioner of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the petitioner shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing; however, in order to reduce costs, the rules of criminal discovery, as well as civil discovery, shall be applicable. The standard of proof shall be beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney. The court may, upon stipulation of both parties, receive in evidence the affidavit or declaration of any psychiatrist, psychologist, or other professional person who was involved in the certification and hearing process, or any professional person involved in the evaluation or treatment of the petitioner during the certification process. The court may allow the affidavit or declaration to be read and the contents thereof considered in the rendering of a decision or verdict in any proceeding held pursuant to subdivision (b) or (c), or subdivision (a) of Section 2972. If the court or jury reverses the determination of the Board of Prison Terms, the court shall stay the execution of the decision for five working days to

CHAPTER 706

allow for an orderly release of the prisoner.

(c) If the Board of Prison Terms continues a parolee's mental health treatment under Section 2962 when it continues the parolee's parole under Section 3001, the procedures of this section shall only be applicable for the purpose of determining if the parolee has a severe mental disorder, whether the parolee's severe mental disorder is not in remission or cannot be kept in remission without treatment, and whether by reason of his or her severe mental disorder, the parolee represents a substantial danger of physical harm to others.

5 of the Welfare and Institutions Code. Commencing January 1, 1986, the State Department of Mental Health may adopt regulations to modify those rights as is necessary in order to provide for the reasonable security of the inpatient facility in which the patient is being held. This paragraph and the regulations adopted pursuant thereto shall become operative on January 1, 1987.

(i) This section applies to persons incarcerated before, as well as after, the effective date of this section.

(j) The definitions in Section 2960 apply to this section.

(k) If there is a conflict between the provisions of this section and Section 2960, the provisions of Section 2960 shall apply.

SEC. 1.5. Notwithstanding any other provision of law, there shall be no prohibition or limitation on the placement in any state hospital by the Director of Mental Health of judicially committed persons or of persons confined in a state hospital for purposes of mental health treatment pursuant to the Penal Code.

SEC. 1.7. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars (\$500,000), shall be made from the State Mandates Claims Fund.

SEC. 2. This act shall only become operative if SB 1296 of the 1985-86 Regular Session is enacted, in which case both this act and SB 1296 shall become operative on the operative date contained in SB 1296. If SB 1296 of the 1985-86 Regular Session is not enacted, this act shall not become operative.

CHAPTER 1419

An act to amend Sections 2960 and 3003 of the Penal Code, relating to prisoners.

[Approved by Governor October 1, 1985. Filed with Secretary of State October 1, 1985.]

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

SECTION 1. Section 2960 of the Penal Code is amended to read: 2960. (a) The Legislature finds that there are prisoners who have a treatable, severe mental disorder which caused, was one of the causes of, or was an aggravating factor in the commission of the crime for which they were incarcerated. Secondly, the Legislature finds that if the severe mental disorders of those prisoners are not in remission or cannot be kept in remission at the time of their parole or upon termination of parole, there is a danger to society, and the state has a compelling interest in protecting the public. Thirdly, the

Legislature finds that in order to protect the public from those persons it is necessary to provide mental health treatment until the severe mental disorder which was one of the causes of or was an aggravating factor in the person's prior criminal behavior is in remission and can be kept in remission.

The Legislature further finds and declares the Department of Corrections should evaluate each prisoner for severe mental disorders during the first year of the prisoner's sentence, and that severely mentally disordered prisoners should be provided with an appropriate level of mental health treatment while in prison and when returned to the community.

(b) As a condition of parole, a prisoner who meets the following criteria shall be required to be treated by the State Department of Mental Health, and the State Department of Mental Health shall provide the necessary treatment:

(1) The prisoner has a severe mental disorder which is not in remission or cannot be kept in remission without treatment. The term "severe mental disorder" means an illness or disease or condition which substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or which demonstrates evidence of an acute brain syndrome for which prompt remission in the absence of treatment is unlikely. The term "severe mental disorder" as used in this section does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances. The term "remission" means a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support. A person "cannot be kept in remission without treatment" if during the year prior to the question being before the Board of Prison Terms or a trial court, he or she has been in remission and he or she has been physically violent, except in self-defense, or he or she has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, or he or she has intentionally caused property damage, or he or she has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan.

(2) 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.

(3) 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.

(4) Prior to release on parole the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of Mental Health have evaluated the prisoner at a

facility of the Department of Corrections, and a chief psychiatrist of the Department of Corrections has certified to the Board of Prison Terms that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission due to medical or psychosocial reasons or failure of the prisoner to voluntarily follow prescribed medical treatment, or both, and that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior. For prisoners being treated by the State Department of Mental Health pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections, and the evaluation shall be done at a state hospital by the person at the state hospital in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections.

If the professionals doing the evaluation do not concur that (A) the prisoner has a severe mental disorder, or (B) that the disorder is not in remission or cannot be kept in remission, or (C) that the severe mental disorder was a cause of, or aggravated the prisoner's criminal behavior, and a chief psychiatrist has certified the prisoner to the Board of Prison Terms pursuant to this paragraph, then the Board of Prison Terms shall order a further examination by two independent professionals, who have at least five years of experience in the diagnosis and treatment of mental disorders, who may be either psychiatrists, or licensed psychologists who have a doctoral degree in psychology. Only if both independent professionals concur with the chief psychiatrist's certification, shall the provisions of this subdivision be applicable to the prisoner.

On July 1 of each year the Department of Corrections and the State Department of Mental Health shall submit to the Board of Prison Terms a list of 20 or more independent professionals on which both departments concur. The professionals shall not be state government employees and shall have at least five years of experience in the diagnosis and treatment of mental disorders and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. For purposes of this subdivision, when the Board of Prison Terms receives the list, they shall only appoint independent professionals from the list. The list shall not be binding on the Board of Prison Terms until they have received it, and shall not be binding after June 30 following receipt of the list.

(5) The crime referred to in paragraph (2) was a crime in which the prisoner used force or violence, or caused serious bodily injury as defined in paragraph (5) of subdivision (e) of Section 243.

(e) (1) The treatment required by subdivision (b) shall be inpatient unless the State Department of Mental Health certifies to the Board of Prison Terms that there is reasonable cause to believe the parolee can be safely and effectively treated on an outpatient basis, in which case the Board of Prison Terms shall permit the State Department of Mental Health to place the parolee in an outpatient treatment program specified by the State Department of Mental

Health. Any prisoner who is to be required to accept treatment pursuant to subdivision (b) shall be informed in writing of his or her right to request a hearing pursuant to subdivision (d). Prior to placing a parolee in a local outpatient program, the State Department of Mental Health shall consult with the local outpatient program as to the appropriate treatment plan. Notwithstanding any other provision of law, a parolee ordered to have outpatient treatment pursuant to this section may be placed in an outpatient treatment program used to provide outpatient treatment under Title 15 (commencing with Section 1600) of Part 2, but the procedural provisions of Title 15 shall not apply. The director of an outpatient program used to provide treatment under Title 15 in which a parolee is placed may place the parolee in a secure mental health facility if the parolee can no longer be safely or effectively treated in the outpatient program, and until the parolee can be safely and effectively treated in the program. Within 15 days after placement in a secure facility the State Department of Mental Health shall conduct a hearing on whether the parolee can be safely and effectively treated in the program. Before deciding to seek revocation of the parole of a parolee receiving mental health treatment pursuant to subdivision (b), and return him or her to prison, the parole officer shall consult with the director of the parolee's outpatient program.

(2) If the State Department of Mental Health has not placed a parolee on outpatient treatment within sixty days after receiving custody of the parolee or after parole is continued pursuant to Section 3001, the parolee may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing to determine whether the prisoner shall be treated as an inpatient or an outpatient. At the hearing, the burden shall be on the State Department of Mental Health to establish that the prisoner requires inpatient treatment as described in this subdivision. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in paragraph (4) of subdivision (b).

(d) (1) A prisoner may request a hearing before the Board of Prison Terms, and the board shall conduct a hearing if so requested, for the purpose of proving that the prisoner does not meet the criteria in subdivision (b). At the hearing the burden of proof shall be on the person or agency who certified the prisoner under paragraph (4) of subdivision (b). If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in paragraph (4) of subdivision (b). The prisoner shall be informed at the hearing of his or her right to request a trial pursuant to paragraph (2) of this subdivision. The Board of Prison Terms shall provide a prisoner who requests a trial a petition form and instructions for filing the petition.

(2) A prisoner who disagrees with the determination of the Board

of Prison Terms that he or she meets the criteria of subdivision (b), may file in the superior court of the county in which he or she is incarcerated or is being treated a petition for a hearing on whether he or she meets the criteria of subdivision (b). The court shall conduct a hearing on the petition within sixty calendar days after the petition is filed, unless either time is waived by the petitioner or his counsel, or good cause is shown. The order of the Board of Prison Terms shall be in effect until the completion of the court proceedings. The court shall advise the petitioner of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the petitioner shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing; however, in order to reduce costs, the rules of criminal discovery, as well as civil discovery, shall be applicable. The standard of proof shall be beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney.

(3) The provisions of this subdivision shall be applicable to a continuation of a parole pursuant to Section 3001.

(e) If the prisoner's severe mental disorder is put into remission during the parole period, and can be kept in remission, the Director of Mental Health shall notify the Board of Prison Terms and the State Department of Mental Health shall discontinue treating the parolee.

(f) (1) Not later than 180 days prior to the termination of parole, or release from prison if the prisoner refused to agree to treatment as a condition of parole as required by this section, unless good cause is shown for the reduction of that 180-day period, if the prisoner's severe mental disorder is not in remission or cannot be kept in remission, the medical director of the state hospital which is treating the parolee, or the county mental health director in charge of the parolee's outpatient program, or the Director of Corrections shall submit to the district attorney of the county in which the parolee is receiving outpatient treatment, or for those in prison the district attorney of the county of commitment, his or her written evaluation on remission. If requested by the district attorney, the written evaluation shall be accompanied by supporting affidavits. The district attorney may then file a petition with the superior court for continued involuntary treatment for one year. The petition shall state the reasons necessitating the continued treatment, with accompanying affidavits specifying the conditions in subdivision (b) and that treatment during the parole period, if any, has been continuously provided by the State Department of Mental Health either in a state hospital or in an outpatient program. The petition shall also specify why the severe mental disorder is not in remission or cannot be kept in remission if the person's treatment is not continued.

(2) The court shall conduct a hearing on the petition for continued treatment. The court shall advise the person of his or her right to be represented by an attorney and of the right to a jury trial.

The attorney for the person shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing, however, in order to reduce costs the rules of criminal discovery, as well as civil discovery, shall be applicable. The need for continued treatment shall be proven beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney. The trial shall commence no later than 30 calendar days prior to the time the person would otherwise have been released, unless the time is waived by the person or unless good cause is shown.

(3) The people shall be represented by the district attorney. If the person is indigent, the county public defender shall be appointed.

(4) If the court or jury finds that the patient is a person described in subdivision (b), and his or her severe mental disorder is not in remission or cannot be kept in remission if treatment is not continued, the court shall order the patient recommitted to the facility in which the patient was confined at the time the petition was filed, or recommitted to the outpatient program in which he or she was being treated at the time the petition was filed, or committed to the State Department of Mental Health if the person was in prison. The commitment shall be for a period of one year from the date of termination of parole or a previous commitment or the scheduled date of release from prison as specified in paragraph (1).

(5) A person shall be released on outpatient status if the committing court finds that there is reasonable cause to believe that the committed person can be safely and effectively treated on an outpatient basis. Except as provided in this paragraph, the provisions of Title 15 (commencing with Section 1600) of Part 2, shall apply to persons placed on outpatient status pursuant to this paragraph. The standard for revocation under Section 1609 shall be that the person cannot be safely and effectively treated on an outpatient basis.

(6) Prior to the termination of a commitment under this subdivision, a petition for recommitment may be filed to determine whether the patient remains a person described in subdivision (b) which severe mental disorder is not in remission or cannot be kept in remission if treatment is not continued. The recommitment proceeding shall be conducted in accordance with the provisions of this subdivision.

(7) Any commitment under this section places an affirmative obligation on the treatment facility to provide treatment for the underlying causes of the person's mental disorder.

(8) Except as provided in this paragraph, the person committed shall be considered to be an involuntary mental health patient and he or she shall be entitled to those rights set forth in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code. Commencing January 1, 1986, the State Department of Mental Health may adopt regulations to modify those rights as is necessary in order to provide for the reasonable security of the inpatient facility in which the patient is

being held. This paragraph and the regulations adopted pursuant thereto shall become operative on January 1, 1987.

(g) Before releasing any inmate or terminating supervision of any parolee who is a danger to self or others, or gravely disabled as a result of mental disorder, and who does not come within the provisions of subdivision (b), the Director of Corrections may, upon probable cause, place, or cause to be placed, the person in a state hospital pursuant to the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(h) The cost of inpatient or outpatient treatment under this article shall be a state expense while the person is under the jurisdiction of the Department of Corrections.

(i) Any person placed outside of a facility of the Department of Corrections for the purposes of inpatient treatment under this article shall not be deemed to be released from imprisonment or from the custody of the Department of Corrections prior to the expiration of the maximum term of imprisonment of the person.

(j) The amendments to this section made in the first year of the 1985-86 Regular Session apply to persons incarcerated before, as well as after, the effective date of those amendments.

SEC. 2. Section 3003 of the Penal Code is amended to read:

3003. (a) An inmate who is released on parole shall be returned to the county from which he or she was committed.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county in a case where that would be in the best interests of the public and of the parolee. If the authority setting the conditions of parole decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record. In making its decision, the authority may consider, among others, the following factors:

(1) The need to protect the life or safety of a victim, the parolee, a witness or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The last legal residence of the inmate having been in another county.

(5) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(6) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) An inmate may be paroled to another state pursuant to any other provision of law.

SEC. 2.5. Notwithstanding any other provision of law, there shall be no prohibition or limitation on the placement in any state hospital by the Director of Mental Health of judicially committed persons or

of persons confined in a state hospital for purposes of mental health treatment pursuant to the Penal Code.

SEC. 2.75. The Legislature finds and declares that Department of Corrections prisoners subject to the provisions of this act are in a separate, distinct class from persons who have been committed by the State Department of Mental Health under the provisions of Section 1026 or 1370 of the Penal Code, or former Section 6316 of the Welfare and Institutions Code. Therefore, it is not intended that any provision of this act be construed in any way to effect the status of persons committed to the State Department of Mental Health under Section 1026 or 1370 of the Penal Code, or former Section 6316 of the Welfare and Institutions Code. Nor are the provisions of this act intended in any manner to affect decisional law interpreting those statutes.

SEC. 2.85. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars (\$500,000), shall be made from the State Mandates Claims Fund.

SEC. 3. Except as provided in paragraph (8) of subdivision (f) of Section 2960 of the Penal Code, this act shall become operative on July 1, 1986.

CHAPTER 1420

An act to add Section 11165.5 to the Penal Code, relating to crimes.

[Approved by Governor October 1, 1985. Filed with
Secretary of State October 1, 1985.]

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

SECTION 1. Section 11165.5 is added to the Penal Code, to read:
11165.5. As used in Sections 11165 and 11166.5, "child care custodian," in addition to the persons specified therein, means an instructional aide, a teacher's aide, or a teacher's assistant employed by any public or private school, who has been trained in the duties imposed by this article, if the school district has so warranted to the State Department of Education. It also includes a classified employee of any public school who has been trained in the duties imposed by this article if the school has so warranted to the State Department of Education.

SEC. 2. School districts which do not train the employees specified in Section 11165.5 of the Penal Code in the duties of child care custodians under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is

AUDITOR/CONTROLLER-RECORDER COUNTY CLERK



COUNTY OF SAN BERNARDINO

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LARRY WALKER
Auditor/Controller-Recorder
County Clerk

ELIZABETH A. STARBUCK
Assistant Auditor/Controller-Recorder
Assistant County Clerk


PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed by the County of San Bernardino, State of California. My business address is 222 W. Hospitality Lane, San Bernardino, CA 92415. I am 18 years of age or older.

On March 1, 2006, I faxed and mailed the letter dated March 1, 2006 to the Commission on State Mandates in response to the Mentally Disordered Offenders: Treatment as a Condition of Parole, CSM 00-TC-28, Penal Code Sections 2966 and 2962, Statutes of 1985, Chapter 1419; Statutes of 1986, Chapter 858; Statutes of 1987, Chapter 687; statutes of 1988, Chapter 658; Statutes of 1989, Chapter 228; Statutes of 1994, Chapter 706, faxed and/or mailed it also to the other parties listed on this mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 1, 2006 at San Bernardino, California.


WENDY SULZMANN