

[Approved by Governor September 28, 1980 Filed with
Secretary of State September 29, 1980]

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

SECTION 1. Section 20541 of the Revenue and Taxation Code is amended to read:

20541. (a) Subject to the limitations provided in this chapter a claimant may, to the extent provided in Section 20543 or 20544, whichever is applicable, file with the Franchise Tax Board, pursuant to Article 3 (commencing with Section 20561) of this chapter, a claim for assistance from the State of California of a sum equal to a percentage of the property taxes accrued and paid by the claimant on his residential dwelling or a sum equal to the percentage of the applicable statutory property tax equivalent under Section 20544 with respect to a claimant renting his residence.

(b) The owner of a dwelling unit which is a mobilehome subject to the license fee imposed by Part 5 (commencing with Section 10701) of this division which is located on land which is owned or rented by such owner may elect to file under subdivision (a) for assistance provided in either Section 20543 or 20544.

SEC. 2. The provisions of this act shall apply to claims for assistance for the 1980-81 fiscal year and years thereafter.

CHAPTER 1253

An act to amend Section 1370.1 of, and to add and repeal Chapter 2.8 (commencing with Section 1001.20) to Title 6 of Part 2 of, the Penal Code, relating to mentally retarded defendants, and making an appropriation therefor.

[Approved by Governor September 28, 1980. Filed with
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The people of the State of California do enact as follows:

SECTION 1. Chapter 2.8 (commencing with Section 1001.20) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.8. DIVERSION OF MENTALLY RETARDED DEFENDANTS

1001.20. As used in this chapter:

(a) "Mentally retarded" means the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(b) "Diversion-related treatment and habilitation" means, but is not limited to, specialized services or special adaptations of generic

services, directed towards the alleviation of mental retardation or towards social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability, and includes, but is not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, sheltered employment, mental health services, recreation, counseling of the individual with such disability and of his family, protective and other social and socio-legal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to mentally retarded persons.

(c) "Regional center" means a regional center for the developmentally disabled established under the Lanterman Developmental Disabilities Services Act which is organized as a private nonprofit community agency to plan, purchase, and coordinate the delivery of services which cannot be provided by state agencies to developmentally disabled persons residing in a particular geographic catchment area, and which is licensed and funded by the State Department of Developmental Services.

(d) "Director of a regional center" means the executive director of a regional center for the developmentally disabled or his or her designee.

(e) "Agency" means the prosecutor, the probation department, and the regional center involved in a particular defendant's case.

(f) "Dual agency diversion" means a treatment and habilitation program developed with court approval by the regional center, administered jointly by the regional center and by the probation department, which is individually tailored to the needs of the defendant as derived from the defendant's individual program plan pursuant to Section 4646 of the Welfare and Institutions Code, and which includes, but is not limited to, treatment specifically addressed to the criminal offense charged, for a specified period of time as prescribed in Section 1001.28.

(g) "Single agency diversion" means a treatment and habilitation program developed with court approval by the regional center, administered solely by the regional center without involvement by the probation department, which is individually tailored to the needs of the defendant as derived from the defendant's individual program plan pursuant to Section 4646 of the Welfare and Institutions Code, and which includes, but is not limited to, treatment specifically addressed to the criminal offense charged, for a specified period of time as prescribed in Section 1001.28.

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

(b) This chapter applies to any offense which is charged as or

reduced to a misdemeanor, except that diversion shall not be ordered when the defendant previously has been diverted under this chapter within two years prior to the present criminal proceedings.

1001.22. The court shall consult with the prosecutor, the defense counsel, the probation department, and the appropriate regional center in order to determine whether a defendant may be diverted pursuant to this chapter. If the defendant is not represented by counsel, the court shall appoint counsel to represent the defendant. When the court suspects that a defendant may be mentally retarded, as defined in subdivision (a) of Section 1001.20, and the defendant consents to the diversion process and to his or her case being evaluated for eligibility for regional center services, and waives his or her right to a speedy trial, the court shall order the prosecutor, the probation department, and the regional center to prepare reports on specified aspects of the defendant's case. Each report shall be prepared concurrently.

(a) The regional center shall submit a report to the probation department within 25 judicial days of the court's order. The regional center's report shall include a determination as to whether the defendant is mentally retarded and eligible for regional center diversion-related treatment and habilitation services, and the regional center shall also submit to the court a proposed diversion program, individually tailored to the needs of the defendant as derived from the defendant's individual program plan pursuant to Section 4646 of the Welfare and Institutions Code, which shall include, but not be limited to, treatment addressed to the criminal offense charged for a period of time as prescribed in Section 1001.28. The regional center's report shall also contain a statement whether such a proposed program is available for the defendant through the treatment and habilitation services of the regional centers pursuant to Section 4648 of the Welfare and Institutions Code.

(b) The prosecutor shall submit a report on specified aspects of the defendant's case, within 30 judicial days of the court's order, to the court, to each of the other agencies involved in the case, and to the defendant. The prosecutor's report shall include all of the following:

(1) A statement of whether the defendant's record indicates the defendant's diversion pursuant to this chapter within two years prior to the alleged commission of the charged divertible offense.

(2) If the prosecutor recommends that this chapter may be applicable to the defendant, he or she shall recommend either a dual or single agency diversion program and shall advise the court, the probation department, the regional center, and the defendant, in writing, of such determination within 20 judicial days of the court's order to prepare the report.

(3) If the prosecutor recommends against diversion, the prosecutor's report shall include a declaration in writing to state for the record the grounds upon which such recommendation was made, and the court shall determine, pursuant to Section 1001.23, whether

the defendant shall be diverted.

(4) If dual agency diversion is recommended by the prosecutor, a copy of the prosecutor's report shall also be provided by the prosecutor to the probation department, the regional center, and the defendant within the above prescribed time period. This notification shall include all of the following:

(i) A full description of the proceedings for diversion and the prosecutor's investigation procedures.

(ii) A general explanation of the role and authority of the probation department, the prosecutor, the regional center, and the court in the diversion program process.

(iii) A clear statement that the court may decide in a hearing not to divert the defendant and that he or she may have to stand trial for the alleged offense.

(iv) A clear statement that should the defendant fail in meeting the terms of his or her diversion, or if, during the period of diversion the defendant is subsequently charged with a felony, the defendant may be required, after a hearing, to stand trial for the original diverted offense.

(c) The probation department shall submit a report on specified aspects of the defendant's case within 30 judicial days of the court's order, to the court, to each of the other agencies involved in the case, and to the defendant. The probation department's report to the court shall be based upon an investigation by the probation department and consideration of the defendant's age, mental retardation, employment record, educational background, ties to community agencies and family, treatment history, criminal record if any, and demonstrable motivation and other mitigating factors in determining whether the defendant is a person who would benefit from a diversion-related treatment and habilitation program. The regional center's report in full shall be appended to the probation department's report to the court.

1001.23. (a) Upon the court's receipt of the reports from the prosecutor, the probation department, and the regional center, and a determination by the regional center that the defendant is not mentally retarded, the criminal proceedings for the offense charged shall proceed. If the defendant is found to be mentally retarded and eligible for regional center services, and the court determines from the various reports submitted to it that the proposed diversion program is acceptable to the court, the prosecutor, the probation department, and the regional center, and if the defendant consents to diversion and waives his or her right to a speedy trial, the court may order, without a hearing, that the diversion program be implemented for a period of time as prescribed in Section 1001.28.

(b) After consideration of the probation department's report, the report of the regional center, and the report of the prosecutor relating to his or her recommendation for or against diversion, and any other relevant information, the court shall determine if the defendant shall be diverted under either dual or single agency

supervision, and referred for habilitation or rehabilitation diversion pursuant to this chapter. If the court does not deem the defendant a person who would benefit by diversion at the time of the hearing, the suspended criminal proceedings may be reinstated, or such other disposition as authorized by law may be made, and diversion may be ordered at a later date.

(c) Where a dual agency diversion program is ordered by the court, the regional center shall submit a report to the probation department on the defendant's progress in the diversion program not less than every six months. Within five judicial days after receiving the regional center's report, the probation department shall submit its report on the defendant's progress in the diversion program, with the full report of the regional center appended, to the court and to the prosecutor. Where single agency diversion is ordered by the court, the regional center alone shall report the defendant's progress to the court and to the prosecutor not less than every six months.

1001.24. No statement, or information procured therefrom, made by the defendant to any probation officer, the prosecutor, or any regional center designee during the course of the investigation conducted by either the regional center or the probation department pursuant to this chapter, and prior to the reporting to the probation department of the regional center's findings of eligibility and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to this investigation.

1001.25. No statement, or information procured therefrom, with respect to the specific offense with which the defendant is charged, which is made to a probation officer, a prosecutor, or a regional center designee subsequent to the granting of diversion shall be admissible in any action or proceeding brought subsequent to the investigation.

1001.26. In the event that diversion is either denied or is subsequently revoked once it has been granted, neither the probation investigation nor the statements or other information divulged by the defendant during the investigation by the probation department or the regional center shall be used in any sentencing procedures.

1001.27. At such time as the defendant's case is diverted, any bail, bond, or undertaking, or deposit in lieu thereof, on file or on behalf of the defendant shall be exonerated, and the court shall enter an order so directing.

1001.28. The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years. The responsible agency or agencies shall file reports on the defendant's progress in the diversion program with the court and with the prosecutor not less than every six months.

(a) Where dual agency diversion has been ordered, the probation department shall be responsible for the progress reports. The probation department shall append to its own report a copy of the

regional center's assessment of the defendant's progress.

(b) Where single agency diversion has been ordered, the regional center alone shall be responsible for the progress reports.

1001.29. If it appears that the divertee is not meeting the terms and conditions of his or her diversion program, the court may hold a hearing and amend such program to provide for greater supervision by the responsible regional center alone, by the probation department alone, or by both the regional center and the probation department. However, notwithstanding any such modification of a diversion order, the court may hold a hearing to determine whether the diverted criminal proceedings should be reinstated if it appears that the divertee's performance in the diversion program is unsatisfactory, or if the divertee is subsequently charged with a felony during the period of diversion.

(a) In cases of dual agency diversion, a hearing to reinstitute the diverted criminal proceedings may be initiated by either the court, the prosecutor, the regional center, or the probation department.

(b) In cases of single agency diversion, a hearing to reinstitute the diverted criminal proceedings may be initiated only by the court, the prosecutor, or the regional center.

(c) No hearing for either of these purposes shall be held unless the moving agency or the court has given the divertee prior notice of the hearing.

(d) Where the cause of the hearing is a subsequent charge of a felony against the divertee subsequent to the diversion order, any hearing to reinstitute the diverted criminal proceedings shall be delayed until such time as probable cause has been established in court to bind the defendant over for trial on the subsequently charged felony.

1001.30. At any time during which the defendant is participating in a diversion program, he or she may withdraw consent to further participate in the diversion program, and at such time as such consent is withdrawn, the suspended criminal proceedings may resume or such other disposition may be made as is authorized by law.

1001.31. If the divertee has performed satisfactorily during the period of diversion, the criminal charges shall be dismissed at the end of the diversion period.

1001.32. Any record filed with the State Department of Justice shall indicate the disposition of those cases diverted pursuant to this chapter.

1001.33. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for such offense. A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way which may result in the denial of any employment, benefit, license, or

certificate.

1001.34. Notwithstanding any other provision of law, the diversion-related individual program plan shall be fully implemented by the regional centers upon court order and approval of the diversion-related treatment and habilitation plan.

1001.35. The State Department of Developmental Services shall report to the Legislature annually regarding the local implementation, administration, and operation of the program. Such report shall include, but not be limited to, the following:

- (a) The date the local programs commenced.
- (b) General eligibility criteria for divertees used by each program.
- (c) The name of the county or other agency or agencies which established each program.
- (d) The offense charged against each divertee.
- (e) The number of individuals accepted by each program.
- (f) The reasons for not accepting individuals referred to the program.
- (g) The specific program completed by each successful divertee.
- (h) The number of successful and unsuccessful terminations and the reasons for unsuccessful termination.

(i) The funding source for the diversion organization. At no time shall the name, addresses, or other identifying information of the referred or participating divertees be used in these reports.

SEC. 2. Section 1370.1 of the Penal Code is amended to read:

1370.1. (a) (1) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced. If the defendant is found mentally incompetent and is developmentally disabled, the trial or judgment shall be suspended until the defendant becomes mentally competent, and the court shall consider a recommendation for placement, which recommendation shall be made to the court by the director of a regional center or designee, and that (A) in the meantime, the defendant be delivered by the sheriff or other person designated by the court to a state hospital for the care and treatment of the developmentally disabled or any other available residential facility approved by the director of a regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code as will promote the defendant's speedy attainment of mental competence, or be placed on outpatient status pursuant to the provisions of Section 1370.4 and Title 15 (commencing with Section 1600) of Part 2, and (B) upon becoming competent, the defendant be returned to the committing court pursuant to the procedures set forth in paragraph (2) of subdivision (a) of Section 1372 or by another person designated by the court. The court shall transmit a copy of its order to the regional center director or designee and to the Director of Developmental Services.

As used in this section, "developmental disability" means a

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

(2) Prior to making such order directing the defendant be confined in a state hospital or other residential facility or be placed on outpatient status, the court shall order the regional center director or designee to evaluate the defendant and to submit to the court within 15 judicial days of such order a written recommendation as to whether the defendant should be committed to a state hospital or to any other available residential facility approved by the regional center director. No person shall be admitted to a state hospital or other residential facility or accepted for outpatient status under Section 1370.4 without having been evaluated by the regional center director or designee.

If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the regional center director that the defendant be transferred to a residential facility approved by the regional center director, order the defendant transferred to such facility. If the defendant is committed or transferred to a residential facility approved by the regional center director, the court may, upon receiving the written recommendation of the regional center director, transfer the defendant to a state hospital or to another residential facility approved by the regional center director.

In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code.

The defendant or prosecuting attorney may contest either kind of order of transfer by filing a petition with the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At such hearing the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court

shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the regional center director or designee.

(b) (1) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the state hospital or other facility to which the defendant is committed or the outpatient supervisor where the defendant is placed on outpatient status shall make a written report to the regional center director or a designee concerning the defendant's progress toward becoming mentally competent. If the defendant has not become mentally competent, but the report discloses a substantial likelihood the defendant will become mentally competent in the foreseeable future, the defendant shall remain in the state hospital or other facility or on outpatient status. Thereafter, at six-month intervals or until the defendant becomes mentally competent, the medical director of the hospital or person in charge of the facility or the outpatient supervisor shall report to the regional center director or his designee regarding the defendant's progress toward becoming mentally competent. The regional center director or shall transmit that report immediately transmit to the court as part of the defendant's progress report. The court shall provide to the prosecutor and defense counsel copies of all reports under this section. If the report indicates that there is no substantial likelihood that the defendant will become mentally competent in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the regional center director or designee and to the Director of Developmental Services.

(2) Any defendant who has been committed or has been on outpatient status for 18 months, and is still hospitalized or on outpatient status shall be returned to the committing court where a hearing shall be held pursuant to the procedures set forth in Section 1369. The court shall transmit a copy of its order to the regional center director or designee and the Director of Developmental Services.

(3) If it is determined by the court that no treatment for the defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. A copy of this order shall be sent to the regional center director or designee and to the Director of Developmental Services.

(c) (1) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, any defendant who has not become mentally competent shall be returned to the committing court. The court shall notify the regional center director or designee and the Director of Developmental Services of such return and of any resulting court orders.

(2) In the event of dismissal of the criminal charges before the defendant becomes mentally competent, the defendant shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), or to commitment and detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code. If it is found that the person is not subject to commitment or detention pursuant to the applicable provision of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code, the individual shall not be subject to further confinement pursuant to this article and the criminal action remains subject to dismissal pursuant to Section 1385. The court shall notify the regional center director and the Director of Developmental Services of any such dismissal.

(d) Notwithstanding any other provision of this section, the criminal action remains subject to dismissal pursuant to Section 1385. If at any time prior to the maximum period of time allowed for proceedings under this article, the regional center director concludes that the behavior of the defendant related to the defendant's criminal offense has been eliminated during time spent in court-ordered programs, the court may, upon recommendation of the regional center director, dismiss the criminal charges. The court shall transmit a copy of any order of dismissal to the regional center director and to the Director of Developmental Services.

SEC. 3. Section 1 of this act shall remain in effect only for three years from its effective date and on such date is repealed.

SEC. 4. (a) The sum of three hundred fifty thousand dollars (\$350,000) is hereby appropriated from the General Fund to the State Department of Developmental Services specifically for the purposes of diversion-related treatment and habilitation services as defined herein.

(b) The sum of one hundred thirty thousand dollars (\$130,000) is hereby appropriated from the General Fund to the Controller for allocation and disbursement to local agencies and school districts to reimburse them for costs mandated by the state and incurred by them pursuant to this act.

CHAPTER 1254

An act to amend Section 318 of the Welfare and Institutions Code, relating to juvenile court law.

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