SUPPLEMENTAL CODES

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State of California
Department of Developmental Services

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EXCERPTS FROM HEALTH AND SAFETY CODE

DIVISION 1. ADMINISTRATION OF PUBLIC HEALTH

(Division 1 enacted by Stats. 1939, Ch. 60.)

PART 1. STATE DEPARTMENT OF HEALTH SERVICES

(Heading of Part 1 amended by Stats. 1980, Ch. 676.)

CHAPTER 2. POWERS AND DUTIES

(Chapter 2 enacted by Stats. 1939, Ch. 60.)

Article 7.5. Conservatorship and Guardianship for Developmentally Disabled Persons

(Heading of Article 7.5 amended by Stats. 1973, Ch. 546.)

416. The Director of Developmental Services may be appointed as either guardian or conservator of the person and estate, or person or estate, of any developmentally disabled person, who is either of the following:

(1) Eligible for the services of a regional center.

(2) A patient in any state hospital, and who was admitted or committed to such hospital from a county served by a regional center.

Any reference in this article to the Director of Health shall be deemed a reference to the Director of Developmental Services.

(Amended by Stats. 1977, Ch. 1252.)

416.1. Unless exceptions are expressly made in this article, the provisions of Division 4 (commencing with Section 1400) of the Probate Code shall apply to guardianship and conservatorship appointments made under this article.

(Amended by Stats. 1979, Ch. 730.)

416.5. The director may be nominated by any one of the following to act as guardian or conservator for any developmentally disabled person; (1) who is or may become eligible for the services of a regional center, or (2) who is a patient in any state hospital, and who was admitted or committed to such hospital from a county served by a regional center:

(a) A parent, relative or friend.

(b) The guardian or conservator of the person or estate, or person and estate, of the developmentally disabled person to act as his successor.

(c) The developmentally disabled person.

Such nomination shall be in writing and may provide that the authority of the director is to take effect at some date or occurrence in the future that may be fixed in the nomination.

The director shall promptly accept or reject such nomination in writing. His acceptance shall be binding upon him and his successors. Any nomination to take effect in the future may be withdrawn by the nominator before its effective date.

(Amended by Stats. 1973, Ch. 546.)

416.6. In every case in which he has agreed to do so, the director may petition for his appointment to act as conservator or guardian of the alleged developmentally disabled person and his estate or his person or estate in the superior court of the county where the main administrative office of the regional center serving such developmentally disabled person is located.

(Amended by Stats. 1973, Ch. 546.)

416.7. If the alleged developmentally disabled person is within the state and is able to attend, he shall be present at the hearing. If he is unable to attend by reason of physical or other inability, such inability shall be evidenced by the affidavit or certificate of a duly licensed medical practitioner as provided in Section 1825 of the Probate Code. Such affidavit or certificate shall be filed no later than 10 days prior to the time of the hearing.

(Amended by Stats. 1979, Ch. 730.)

416.8. In addition to the requirements of Division 4 (commencing with Section 1400) of the Probate Code, the court shall be provided by the regional center with a complete evaluation of the developmentally disabled person for whose protection the appointment is sought. The report shall include a current diagnosis of his physical condition prepared under the direction of a licensed medical practitioner and a report of his current mental condition and social adjustment prepared by a licensed and qualified social worker or psychologist. The evaluation report required by this section shall not be made part of the public record of the guardianship or conservatorship proceedings and shall be open to inspection only by court personnel, the person who is the subject of the proceeding, his parents, guardian or conservator, the attorneys for such parties, and such other persons as may be designated by the court. If an affidavit or certificate has been filed as provided in Section 416.7 evidencing the inability of the alleged developmentally disabled person to be present at the hearing, the psychologist or social worker who assists in preparing the report shall visit the alleged developmentally disabled person and be prepared to testify as to his present condition.

(Amended by Stats. 1979, Ch. 730.)

416.9. The court may appoint the Director of Developmental Services as guardian or conservator of the person and estate or person or estate of a minor or adult developmentally disabled person. The preferences established in Section 1812 of the Probate Code for appointment of a conservator shall not apply. An appointment of the Director of Developmental Services as conservator shall not of itself constitute a judicial finding that the developmentally disabled person is legally incompetent. The petition for the appointment of the Director of Developmental Services as conservator of an adult developmentally disabled person may include a request that the court adjudge the developmentally disabled person to be legally incompetent or such an adjudication may be made subsequently upon a petition made, noticed, and heard by the court in the same manner as a petition for the appointment of the director as conservator. If the Director of Developmental Services is serving as the guardian of an adult developmentally disabled person on December 31, 1980, after that date such appointment shall be

deemed to be the appointment of a conservator and the conservatee shall be deemed to have been adjudged to be legally incompetent.

(Amended by Stats. 1979, Ch. 730.)

416.95. Prior to the appointment of the Director of Developmental Services as guardian or conservator of the person or estate of a minor or adult developmentally disabled person, the court shall inform the person of the nature and purpose of the guardianship or conservatorship proceedings and the effect of the proceedings on the basic rights of the person. After communicating the information to the alleged developmentally disabled person and prior to the appointment of the Director of Developmental Services as guardian or conservator, the court shall consult with the person to determine the person's opinion concerning the appointment.

Any adult developmentally disabled person for whom guardianship or conservatorship is sought pursuant to this article shall be informed by a member or designee of the regional center and by the court of the person's right to counsel; and if the person does not have an attorney for the proceedings the court shall immediately appoint the public defender or other attorney to represent the person. The person shall pay the cost for such legal service if able.

If an affidavit or certificate has been filed, as provided in Section 416.7, evidencing the inability of the alleged developmentally disabled person to be present at the hearing, the psychologist or social worker assisting in preparing the report and who is required to visit each person as provided in Section 416.8 shall communicate such information to the person during the visit, consult the person to determine the person's opinion concerning the appointment, and be prepared to testify as to the person's opinion, if any.

(Amended by Stats. 1979, Ch. 730.)

416.10. No appointment of both the Director of Developmental Services and a private guardian or conservator shall be made for the same person and estate, or person or estate. The Director of Developmental Services may be appointed as provided in this article to succeed an existing guardian or conservator upon the death, resignation or removal of such guardian or conservator.

(Amended by Stats. 1977, Ch. 1252.)

416.11. No costs or fees shall be charged or received by the county clerk for the filing of any conservatorship or guardianship petition as provided in this article, or for any official services performed by him in the course of the proceeding under this article.

(Added by Stats. 1968, Ch. 1099.)

416.12. The Director of Developmental Services shall file an official bond in no event less than twenty–five thousand dollars ($25,000), which bond shall inure to the joint benefit of the several guardianship or conservatorship estates and the State of California, and the Director of Developmental Services shall not be required to file bonds in individual cases.

(Amended by Stats. 1978, Ch. 429.)

416.13. The appointment by the court of the Director of Developmental Services as conservator or guardian shall be by the title of his office. The authority

of the Director of Developmental Services as conservator or guardian shall cease upon the termination of his term of office as such Director of Developmental Services and his authority shall vest in his successor or successors in office without further court proceedings. The Director of Developmental Services shall not resign as conservator or guardian unless his resignation is approved by the court.

(Amended by Stats. 1977, Ch. 1252.)

416.14. The Director of Developmental Services shall:

(a) Consult with developmentally disabled persons and their families with respect to the services the director offers.

(b) Act as adviser for those developmentally disabled persons who request the director's advice and guidance or for whose benefit it is requested.

(c) Accept appointment as guardian or conservator of the person and estate, or person or estate, of those developmentally disabled persons who need the director's assistance and protection.

(Amended by Stats. 1979, Ch. 730.)

416.15. The Director of Developmental Services, when acting as adviser, may provide advice and guidance to the developmentally disabled person without prior appointment by a court. The provision for such services shall not be dependent upon a finding of incompetency, nor shall it abrogate any civil right otherwise possessed by the developmentally disabled person.

(Amended by Stats. 1977, Ch. 1252.)

416.16. The Director of Developmental Services shall have the same powers and duties as those established for guardians and conservators in Division 4 (commencing with Section 1400) of the Probate Code and shall succeed the State Director of Health as guardian or conservator of developmentally disabled individuals for whom the State Director of Health was appointed guardian or conservator.

(Amended by Stats. 1979, Ch. 730.)

416.17. It is the intent of this article that the director when acting as guardian or conservator of the person of a developmentally disabled person through the regional center as provided in Section 416.19 of this article, shall maintain close contact with the developmentally disabled person no matter where such person is living in this state; shall act as a wise parent would act in caring for his developmentally disabled child; and shall permit and encourage maximum self–reliance on the part of the developmentally disabled person under his protection.

(Amended by Stats. 1973, Ch. 546.)

416.18. The director shall provide for at least an annual review in writing of the physical, mental, and social condition of each developmentally disabled person for whom he has been appointed conservator or guardian, or for whom he is otherwise acting in his official capacity under this article. These records shall be confidential but may be made available to persons approved by the director or the court.

(Amended by Stats. 1973, Ch. 546.)

416.19. The services to be rendered by the director as adviser or as guardian or conservator of the person shall be performed through the regional centers or by other agencies or individuals designated by the regional centers.

(Amended by Stats. 1975, Ch. 694.)

416.20. The director shall receive such reasonable fees for his services as guardian or conservator of the estate as the court allows and such fees shall be paid into the General Fund of the State Treasury.

(Added by Stats. 1968, Ch. 1099.)

416.23. This article does not authorize the care, treatment, or supervision or any control over any developmentally disabled person without the written consent of his parent or guardian or conservator.

(Amended by Stats. 1979, Ch. 730.)

SUPPLEMENTAL CODES

EXCERPTS FROM WELFARE AND INSTITUTIONS CODE

DIVISION 6. ADMISSIONS AND JUDICIAL COMMITMENTS

(Division 6 repealed and added by Stats. 1967, Ch. 1667.)

PART 1. ADMISSIONS

(Part 1 added by Stats. 1967, Ch. 1667.)

CHAPTER 1. VOLUNTARY ADMISSIONS TO MENTAL HOSPITALS AND INSTITUTIONS

(Chapter 1 added by Stats. 1967, Ch. 1667.)

6000. (a) Pursuant to applicable rules and regulations established by the State Department of State Hospitals or the State Department of Developmental Services, the medical director of a state hospital may receive in that hospital, as a boarder and patient, a person who is a suitable person for care and treatment in that hospital, upon receipt of a written application for the admission of the person into the hospital for care and treatment made in accordance with the following requirements:

(1) In the case of an adult, the application shall be made voluntarily by the person, at a time when he or she is in a condition of mind as to render him or her competent to make it or, if he or she is a conservatee with a conservator of the person or person and estate who was appointed under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 with the right as specified by court order under Section 5358 to place his or her conservatee in a state hospital, by his or her conservator.

(2) In the case of a minor, the application shall be made by his or her parents, or by the parent, guardian, conservator, or other person entitled to his or her custody to a mental hospital as may be designated by the Director of State Hospitals or the Director of Developmental Services to admit minors on voluntary applications. If the minor has a conservator of the person, or the person and the estate, appointed under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5, with the right as specified by court order under Section 5358 to place the conservatee in a state hospital the application for the minor shall be made by his or her conservator.

(b) A person received in a state hospital shall be deemed a voluntary patient.

(c) Upon the admission of a voluntary patient to a state hospital the medical director shall immediately forward to the office of the State Department of State Hospitals or the State Department of Developmental Services the record of the voluntary patient, showing the name, residence, age, sex, place of birth, occupation, civil condition, date of admission of the patient to the hospital, and other information as required by the rules and regulations of the department.

(d) The charges for the care and keeping of a person with a mental health disorder in a state hospital shall be governed by the provisions of Article 4

(commencing with Section 7275) of Chapter 3 of Division 7 relating to the charges for the care and keeping of persons with mental health disorders in state hospitals.

(e) A voluntary adult patient may leave the hospital or institution at any time by giving notice of his or her desire to leave to a member of the hospital staff and completing normal hospitalization departure procedures. A conservatee may leave in a like manner if notice is given by his or her conservator.

(f) A minor who is a voluntary patient may leave the hospital or institution after completing normal hospitalization departure procedures after notice is given to the superintendent or person in charge by the parents, or the parent, guardian, conservator, or other person entitled to the custody of the minor, of their desire to remove him or her from the hospital.

(g) No person received into a state hospital, private mental institution, or county psychiatric hospital as a voluntary patient during his or her minority shall be detained therein after he or she reaches the age of majority. A person, after attaining the age of majority, may apply for admission into the hospital or institution for care and treatment in the manner prescribed in this section for applications by an adult.

(h) The State Department of State Hospitals or the State Department of Developmental Services shall establish rules and regulations necessary to carry out properly the provisions of this section.

(i) Commencing July 1, 2012, the department shall not admit any person to a developmental center pursuant to this section.

(Amended by Stats. 2014, Ch. 144, Sec. 106. (AB 1847) Effective January 1, 2015.)

6000.5. Pursuant to Section 6000, the medical director of a state hospital for the developmentally disabled may receive in such hospital, as a boarder and patient, any developmentally disabled person as defined in Section 4512 who has been referred in accordance with Sections 4652, 4653, and 4803.

(Amended by Stats. 1979, Ch. 373.)

PART 2. JUDICIAL COMMITMENTS

(Part 2 added by Stats. 1967, Ch. 1667.)

CHAPTER 2. COMMITMENT CLASSIFICATION

(Chapter 2 added by Stats. 1967, Ch. 1667.)

Article 2. Persons with Intellectual Disabilities

(Heading of Article 2 amended by Stats. 2012, Ch. 457, Sec. 55. (SB 1381) Effective January 1, 2013.)

6500. (a) For purposes of this article, the following definitions shall apply:

(1) "Dangerousness to self or others" shall include, but not be limited to, a finding of incompetence to stand trial pursuant to the provisions of Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code when the defendant has been charged with murder, mayhem, aggravated mayhem, a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, robbery perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, carjacking perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, a

violation of subdivision (b) of Section 451 of the Penal Code, a violation of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 288 of the Penal Code, any of the following acts when committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person: a violation of paragraph (1) or (2) of subdivision (a) of Section 262 of the Penal Code, a violation of Section 264.1, 286, or 287 of, or former Section 288a of, the Penal Code, or a violation of subdivision (a) of Section 289 of the Penal Code; a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 18725, 18740, 18745, 18750, or 18755 of the Penal Code, or if the defendant has been charged with a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person.

(2) "Developmental disability" shall have the same meaning as defined in subdivision (a) of Section 4512.

(b) (1) A person with a developmental disability may be committed to the State Department of Developmental Services for residential placement other than in a state developmental center or state–operated community facility, as provided in subdivision (a) of Section 6509, if he or she is found to be a danger to himself, herself, or others.

(A) Any order of commitment made pursuant to this paragraph shall expire automatically one year after the order of commitment is made.

(B) This paragraph shall not be construed to prohibit any party enumerated in Section 6502 from filing subsequent petitions for additional periods of commitment. In the event subsequent petitions are filed, the procedures followed shall be the same as with the initial petition for commitment.

(2) A person with a developmental disability shall not be committed to the State Department of Developmental Services for placement in a state developmental center or state–operated community facility pursuant to this article unless he or she meets the criteria for admission to a developmental center pursuant to paragraph (2), (3), or (4) of subdivision (a) of Section 7505 and is dangerous to self or others or he or she currently is a resident of a state developmental center or state–operated community facility pursuant to an order of commitment made pursuant to this article prior to July 1, 2012, and is being recommitted pursuant to paragraph (4) of this subdivision.

(3) If the person with a developmental disability is in the care or treatment of a state hospital, developmental center, or other facility at the time a petition for commitment is filed pursuant to this article, proof of a recent overt act while in the care and treatment of a state hospital, developmental center, or other facility is not required in order to find that the person is a danger to self or others.

(4) In the event subsequent petitions are filed with respect to a resident of a state developmental center or a state–operated community facility committed prior to July 1, 2012, the procedures followed and criteria for recommitment shall be the same as with the initial petition for commitment.

(5) In any proceedings conducted under the authority of this article, the person alleged to have a developmental disability shall be informed of his or her right to counsel by the court, and if the person does not have an attorney for the proceedings, the court shall immediately appoint the public defender or other attorney to represent him or her. The person shall pay the cost for the legal services if he or she is able to do so. At any judicial proceeding under the provisions of this article, allegations that a person has a developmental disability and is dangerous to himself or herself or to others shall be presented by the district attorney for the county unless the board of supervisors, by ordinance or resolution, delegates this authority to the county counsel. The clients' rights advocate for the regional center may attend any judicial proceedings to assist in protecting the individual's rights.

(c) (1) Any order of commitment made pursuant to this article with respect to a person described in paragraph (3) of subdivision (a) of Section 7505 shall expire automatically one year after the order of commitment is made. This section shall not be construed to prohibit any party enumerated in Section 6502 from filing subsequent petitions for additional periods of commitment. In the event subsequent petitions are filed, the procedures followed shall be the same as with an initial petition for commitment.

(2) Any order of commitment made pursuant to this article on or after July 1, 2012, with respect to the admission to a developmental center of a person described in paragraph (2) of subdivision (a) of Section 7505 shall expire automatically six months after the earlier of the order of commitment pursuant to this section or the order of a placement in a developmental center pursuant to Section 6506, unless the regional center, prior to the expiration of the order of commitment, notifies the court in writing of the need for an extension. The required notice shall state facts demonstrating that the individual continues to be in acute crisis as defined in paragraph (1) of subdivision (d) of Section 4418.7 and the justification for the requested extension, and shall be accompanied by the comprehensive assessment and plan described in subdivision (e) of Section 4418.7. An order granting an extension shall not extend the total period of commitment beyond one year, including any placement in a developmental center pursuant to Section 6506. If, prior to expiration of one year, the regional center notifies the court in writing of facts demonstrating that, due to circumstances beyond the regional center's control, the placement cannot be made prior to expiration of the extension, and the court determines that good cause exists, the court may grant one further extension of up to 30 days. The court may also issue any orders the court deems appropriate to ensure that necessary steps are taken to ensure that the individual can be safely and appropriately transitioned to the community in a timely manner. The required notice shall state facts demonstrating that the regional center has made significant progress implementing the plan described in subdivision (e) of Section 4418.7 and that extraordinary circumstances exist beyond the regional center's control that have prevented the plan's implementation. This paragraph does not preclude the individual or any person acting on his or her behalf from making a request for release pursuant to Section 4800, or counsel for the individual from filing a petition for habeas corpus pursuant to Section 4801. Notwithstanding subdivision (a) of

Section 4801, for purposes of this paragraph, judicial review shall be in the superior court of the county that issued the order of commitment pursuant to this section.

(Amended by Stats. 2018, Ch. 884, Sec. 1.5. (SB 175) Effective September 28, 2018. Section operative January 1, 2019, pursuant to Sec. 5 of Stats. 2018, Ch. 884.)

6501. If a person is charged with a violent felony, as described in Section 667.5 of the Penal Code, and the individual has been committed to the State Department of Developmental Services pursuant to Section 1370.1 of the Penal Code or Section 6500 for placement in a secure treatment facility, as described in subdivision (e) of Section 1370.1 of the Penal Code, the department shall give priority to placing the individual at Porterville Developmental Center prior to placing the individual at any other secure treatment facility.

(Amended by Stats. 2012, Ch. 25, Sec. 20. (AB 1472) Effective June 27, 2012.)

6502. A petition for the commitment of a person with a developmental disability to the State Department of Developmental Services who has been found incompetent to stand trial pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code when the defendant has been charged with one or more of the offenses identified or described in Section 6500, may be filed in the superior court of the county that determined the question of mental competence of the defendant. All other petitions may be filed in the county in which that person is physically present. The following persons may request the person authorized to present allegations pursuant to Section 6500 to file a petition for commitment:

(a) The parent, guardian, conservator, or other person charged with the support of the person with a developmental disability.

(b) The probation officer.

(c) The Department of Corrections and Rehabilitation, Division of Juvenile Justice.

(d) Any person designated for that purpose by the judge of the court.

(e) The Secretary of the Department of Corrections and Rehabilitation.

(f) The regional center director or his or her designee.

The request shall state the petitioner's reasons for supposing the person to be eligible for admission thereto, and shall be verified by affidavit.

(Amended by Stats. 2012, Ch. 25, Sec. 21. (AB 1472) Effective June 27, 2012.)

6503. The court shall fix a time and place for the hearing of the petition. The time for the hearing shall be set no more than 60 days after the filing of the petition. The court may grant a continuance only upon a showing of good cause. The hearing may, in the discretion of the court, be held at any place which the court deems proper, and which will give opportunity for the production and examination of witnesses.

(Amended by Stats. 1980, Ch. 859, Sec. 3.)

6504. In all cases the court shall require due notice of the hearing of the petition to be given to the person alleged to have a developmental disability. Whenever a petition is filed, the court shall require such notice of the hearing of the petition as it deems proper to be given to any parent, guardian, conservator, or other person charged with the support of the person mentioned in the petition.

(Amended by Stats. 2012, Ch. 25, Sec. 22. (AB 1472) Effective June 27, 2012.)

6504.5. (a) Wherever a petition is filed pursuant to this article, the court shall appoint the director of a regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500), or the designee of the director, to examine the person alleged to have a developmental disability.

(b) Within 15 judicial days after his or her appointment, the regional center director or designee shall submit to the court in writing a report containing his or her evaluation of the person alleged to have a developmental disability. If the person is an individual described in paragraph (2) of subdivision (a) of Section 7505, the report shall include the results of the assessment conducted pursuant to subdivision (b) of Section 4418.7. The report shall contain a recommendation of a facility or facilities in which the alleged developmentally disabled person may be placed. The report shall include any comprehensive assessment, or updated assessment, conducted by the regional center pursuant to paragraph (2) of subdivision (c) of Section 4418.25.

(c) The report shall include a description of the least restrictive residential placement necessary to achieve the purposes of treatment. In determining the least restrictive residential placement, consideration shall be given to public safety. If placement into or out of a developmental center is recommended, the regional center director or designee simultaneously shall submit the report to the executive director of the developmental center or his or her designee. The executive director of the developmental center or his or her designee may, within 15 days of receiving the regional center report, submit to the court a written report evaluating the ability of the developmental center to achieve the purposes of treatment for this person and whether the developmental center placement can adequately provide the security measures or systems required to protect the public health and safety from the potential dangers posed by the person's known behaviors.

(d) The reports prepared by the regional center director and developmental center director, if applicable, shall also address suitable interim placements for the person as provided for in Section 6506.

(Amended by Stats. 2014, Ch. 30, Sec. 22. (SB 856) Effective June 20, 2014.)

6505. Whenever the court considers it necessary or advisable, it may cause an order to issue for the apprehension and delivery to the court of the person alleged to have a developmental disability, and may have the order executed by a peace officer.

(Amended by Stats. 2012, Ch. 457, Sec. 56. (SB 1381) Effective January 1, 2013.)

6506. Pending the hearing, the court may order that the alleged dangerous person alleged to have a developmental disability may be left in the charge of his or her parent, guardian, conservator, or other suitable person, or placed in a state developmental center, in the county psychiatric hospital, or in any other suitable placement as determined by the court. Prior to the issuance of an order under this section, the regional center and developmental center, if applicable, shall recommend to the court a suitable person or facility to care for the person alleged to have a developmental disability. The determination of a suitable person or facility shall be the least restrictive option that provides for the person's treatment needs and that has existing security systems or measures in place to adequately protect the

public safety from any known dangers posed by the person. In determining whether the public safety will be adequately protected, the court shall make the finding required by subparagraph (D) of paragraph (1) of subdivision (a) of Section 1370.1 of the Penal Code.

Pending the hearing, the court may order that the person receive necessary habilitation, care, and treatment, including medical and dental treatment.

Orders made pursuant to this section shall expire at the time set for the hearing pursuant to Section 6503. If the court upon a showing of good cause grants a continuance of the hearing on the matter, it shall order that the person be detained pursuant to this section until the hearing on the petition is held.

(Amended by Stats. 2012, Ch. 25, Sec. 24. (AB 1472) Effective June 27, 2012.)

6507. The court shall inquire into the condition or status of the person alleged to have a developmental disability. For this purpose it may by subpoena require the attendance before it of a physician who has made a special study of developmental disabilities and is qualified as a medical examiner, and of a clinical psychologist, or of two such physicians, or of two such psychologists, to examine the person and testify concerning his or her developmental disability. The court may also by subpoena require the attendance of such other persons as it deems advisable, to give evidence.

(Amended by Stats. 2012, Ch. 25, Sec. 25. (AB 1472) Effective June 27, 2012.)

6508. Each psychologist and physician shall receive for each attendance mentioned in Section 6507 the sum of five dollars ($5) for each person examined, together with his necessary actual expenses occasioned thereby, and other witnesses shall receive for such attendance such fees and expenses as the court in its discretion allows, if any, not exceeding the fees and expenses allowed by law in other cases in the superior court.

Any fees or traveling expenses payable to a psychologist, physician, or witness as provided in this section and all expenses connected with the execution of any process under the provisions of this article, which are not paid by the parent, guardian, conservator, or person charged with the support of the person with the supposed developmental disability, shall be paid by the county treasurer of the county in which the person resides, upon the presentation to the treasurer of a certificate of the judge that the claimant is entitled thereto.

(Amended by Stats. 2012, Ch. 25, Sec. 26. (AB 1472) Effective June 27, 2012.)

6509. (a) If the court finds that the person has a developmental disability, and is a danger to himself, herself, or to others, the court may make an order that the person be committed to the State Department of Developmental Services for suitable treatment and habilitation services. Suitable treatment and habilitation services is defined as the least restrictive residential placement necessary to achieve the purposes of treatment. Care and treatment of a person committed to the State Department of Developmental Services may include placement in any of the following:

(1) Any licensed community care facility, as defined in Section 1502 of the Health and Safety Code, or any health facility, as defined in Section 1250 of the

Health and Safety Code, other than a developmental center or state–operated facility.

(2) The acute crisis center at Fairview Developmental Center, if the person meets the criteria for admission pursuant to paragraph (2) of subdivision (a) of Section 7505.

(3) On or after January 1, 2015, the acute crisis center at Sonoma Developmental Center, if the person meets the criteria for admission pursuant to paragraph (2) of subdivision (a) of Section 7505.

(4) The secure treatment program at Porterville Developmental Center, if the person meets the criteria for admission pursuant to paragraph (3) of subdivision (a) of Section 7505.

(5) Canyon Springs Community Facility, if the person meets the criteria for admission pursuant to paragraph (4) of subdivision (a) of Section 7505.

(6) Any other appropriate placement permitted by law.

(b) (1) The court shall hold a hearing as to the available placement alternatives and consider the reports of the regional center director or designee and the developmental center director or designee submitted pursuant to Section 6504.5. After hearing all the evidence, the court shall order that the person be committed to the placement that the court finds to be the most appropriate and least restrictive alternative. If the court finds that release of the person can be made subject to conditions that the court deems proper and adequate for the protection and safety of others and the welfare of the person, the person shall be released subject to those conditions.

(2) The court, however, may commit a person with a developmental disability who is not a resident of this state under Section 4460 for the purpose of transportation of the person to the state of his or her legal residence pursuant to Section 4461. The State Department of Developmental Services shall receive the person committed to it and shall place the person in the placement ordered by the court.

(c) If the person has at any time been found mentally incompetent pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code arising out of a complaint charging a felony offense specified in Section 290 of the Penal Code, the court shall order the State Department of Developmental Services to give notice of that finding to the designated placement facility and the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility.

(d) For persons residing in the secure treatment program at the Porterville Developmental Center, at the person's annual individual program plan meeting the team shall determine if the person should be considered for transition from the secure treatment program to an alternative placement. If the team concludes that an alternative placement is appropriate, the regional center, in coordination with the developmental center, shall conduct a comprehensive assessment and develop a proposed plan to transition the individual from the secure treatment program to the community. The transition plan shall be based upon the individual's needs, developed through the individual program plan process, and shall ensure that needed services and supports will be in place at the time the individual moves.

Individual supports and services shall include, when appropriate for the individual, wrap–around services through intensive individualized support services. The clients' rights advocate for the regional center shall be notified of the individual program plan meeting and may participate in the meeting unless the consumer objects on his or her own behalf. The individual's transition plan shall be provided to the court as part of the notice required pursuant to subdivision (e).

(e) If the State Department of Developmental Services decides that a change in placement is necessary, it shall notify, in writing, the court of commitment, the district attorney, the attorney of record for the person, and the regional center of its decision at least 15 days in advance of the proposed change in placement. The court may hold a hearing and (1) approve or disapprove of the change, or (2) take no action in which case the change shall be deemed approved. At the request of the district attorney or of the attorney for the person, a hearing shall be held.

(Amended by Stats. 2018, Ch. 884, Sec. 2. (SB 175) Effective September 28, 2018.)

6510. In case of the dismissal of the petition, the court may, if it considers the petition to have been filed with malicious intent, order the petitioner to pay the expenses in connection therewith, and may enforce such payment by such further orders as it deems necessary.

(Added by Stats. 1967, Ch. 1667.)

6510.5. Under no circumstances shall the court order placement of a person described in this article or a dangerous person committed pursuant to Section 1370.1 of the Penal Code to a developmental center if the department has specifically notified the court in writing that the individual cannot be safely served in that developmental center.

(Added by Stats. 2012, Ch. 25, Sec. 28. (AB 1472) Effective June 27, 2012.)

6511. Any person who knowingly contrives to have any person adjudged to have a developmental disability under the provisions of this article, unlawfully or improperly, is guilty of a misdemeanor.

(Amended by Stats. 2012, Ch. 25, Sec. 29. (AB 1472) Effective June 27, 2012.)

6512. If, when a boy or girl is brought before a juvenile court under the juvenile court law, it appears to the court, either before or after adjudication, that the person has a developmental disability, or if, on the conviction of any person of a crime by any court, it appears to the court that the person has a developmental disability, the court may adjourn the proceedings or suspend the sentence, as the case may be, and direct some suitable person to take proceedings under this article against the person before the court, and the court may order that, pending the preparation, filing, and hearing of the petition, the person before the court be detained in a place of safety, or be placed under the guardianship of some suitable person, on his entering into a recognizance for the appearance of the person upon trial or under conviction when required. If, upon the hearing of the petition, or upon a subsequent hearing, the person upon trial or under conviction is not found to have a developmental disability, the court may proceed with the trial or impose sentence, as the case may be.

(Amended by Stats. 2012, Ch. 25, Sec. 30. (AB 1472) Effective June 27, 2012.)

6513. (a) The State Department of Developmental Services shall pay for the costs, as defined in this section, of judicial proceedings, including commitment, placement, or release, under this article under both of the following conditions:

(1) The judicial proceedings are in a county where a state hospital or developmental center maintains a treatment program for persons with intellectual disabilities who are a danger to themselves or others.

(2) The judicial proceedings relate to a person with an intellectual disability who is at the time residing in the state hospital or developmental center located in the county of the proceedings.

(b) The appropriate financial officer or other designated official in a county described in subdivision (a) may prepare a statement of all costs incurred by the county in the investigation, preparation for, and conduct of the proceeding, including any costs of the district attorney or county counsel and any public defender or court–appointed counsel representing the person, and including any costs incurred by the county for the guarding or keeping of the person while away from the state hospital and for transportation of the person to and from the hospital. The statement shall be certified by a judge of the superior court and shall be sent to the State Department of Developmental Services. In lieu of sending statements after each proceeding, the statements may be held and submitted quarterly for the preceding three–month period.

(Amended by Stats. 2012, Ch. 457, Sec. 57. (SB 1381) Effective January 1, 2013.)

CHAPTER 3. EXPENSE OF DETENTION OR PROCEEDINGS CONCERNING COMMITMENTS

(Chapter 3 added by Stats. 1967, Ch. 1667.)

Article 4. Persons with Intellectual Disabilities

(Heading of Article 4 amended by Stats. 2012, Ch. 457, Sec. 59. (SB 1381) Effective January 1, 2013.)

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

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

(Amended by Stats. 2012, Ch. 457, Sec. 60. (SB 1381) Effective January 1, 2013.)

6716. In any case in which the probation officer is charged with the duty of collecting amounts payable to the county under this article, upon the verified application of the probation officer the board of supervisors may make an order discharging the probation officer from further accountability for the collection of any such amount in any case as to which the board determines that the amount is too small to justify the cost of collection; that the statute of limitations has run; or that the collection of such amount is improbable for any reason. Such order is authorization for the probation officer to close his books in regard to such item, but such discharge of accountability of the probation officer does not constitute a release of any person from liability for payment of any such amount which is due and owing to the county. The board may request a written opinion from the district attorney or county counsel as to whether any particular amount is too small to justify the cost of collection, whether the statute of limitations has run, or whether collection of any particular item is improbable.

(Added by Stats. 1967, Ch. 1667.)

6717. The cost necessarily incurred in determining whether a person is a fit subject for commitment and securing his or her commitment, is a charge upon the county where he or she is committed. These costs include the fees of witnesses, medical examiners, psychiatrists, and psychologists allowed by the judge ordering the examination. If the person sought to be committed is not an indigent person, the costs of the proceedings are the obligation of that person and shall be paid by him or her, or by his or her guardian or conservator, as provided in Division 4 (commencing with Section 1400) of the Probate Code, or shall be paid by persons legally liable for his or her maintenance, unless otherwise ordered by the judge.

(Amended by Stats. 2012, Ch. 457, Sec. 61. (SB 1381) Effective January 1, 2013.)

CHAPTER 4. EXECUTION OF COMMITMENT ORDERS

(Chapter 4 added by Stats. 1967, Ch. 1667.)

Article 4. Persons with Intellectual Disabilities

(Heading of Article 4 amended by Stats. 2012, Ch. 457, Sec. 62. (SB 1381) Effective January 1, 2013.)

6740. The court shall attach to the order of commitment of a person with an intellectual disability its findings and conclusions, together with all the social and other data it has bearing upon the case, and the same shall be delivered to the place of commitment with the order.

(Amended by Stats. 2012, Ch. 457, Sec. 63. (SB 1381) Effective January 1, 2013.)

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

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

(Amended by Stats. 2012, Ch. 457, Sec. 64. (SB 1381) Effective January 1, 2013.)

DIVISION 7. MENTAL INSTITUTIONS

(Division 7 repealed and added by Stats. 1967, Ch. 1667.)

CHAPTER 2. STATE HOSPITALS FOR THE MENTALLY DISORDERED

(Heading of Chapter 2 renumbered from Chapter 3 by Stats. 1979, Ch. 373.)

Article 1. Establishment and General Government

(Article 1 added by Stats. 1967, Ch. 1667.)

7201. All of the institutions under the jurisdiction of the State Department of State Hospitals shall be governed by the uniform rules and regulations of the State Department of State Hospitals and all of the provisions of Part 2 (commencing with Section 4100) of Division 4 of this code on the administration of state institutions serving persons with mental health disorders shall apply to the conduct and management of the state hospitals. All of the institutions under the jurisdiction of the State Department of Developmental Services shall be governed by the uniform rules and regulations of the State Department of Developmental Services and, except as provided in Chapter 4 (commencing with Section 7500) of this division, all of the provisions of Part 2 (commencing with Section 4440) of Division 4.1 of this code on the administration of state institutions serving persons with developmental disabilities shall apply to the conduct and management of the state hospitals for persons with developmental disabilities.

(Amended by Stats. 2014, Ch. 144, Sec. 115. (AB 1847) Effective January 1, 2015.)

Article 3. Patients' Care

(Article 3 added by Stats. 1967, Ch. 1667.)

7250. Any person who has been committed is entitled to a writ of habeas corpus, upon a proper application made by the State Department of State Hospitals or the State Department of Developmental Services, by that person, or by a relative or friend in his or her behalf to the judge of the superior court of the county in which the hospital is located, or if the person has been found incompetent to stand trial and has been committed pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code, judicial review shall be in the superior court for the county that determined the question of the mental competence of the person. All documents requested by the court in the county of confinement shall be forwarded from the county of commitment to the court. Upon the return of the writ, the truth of the allegations under which he or she was committed shall be inquired into and determined. The medical history of the person as it appears in the clinical records shall be given in evidence, and the superintendent in charge of the state hospital wherein the person is held in custody and any other person who has knowledge of the facts shall be sworn and shall testify relative to the mental condition of the person.

(Amended by Stats. 2012, Ch. 24, Sec. 161. (AB 1470) Effective June 27, 2012.)

Article 4. Property and Support of Patients

(Article 4 added by Stats. 1967, Ch. 1667.)

7281. There is at each institution under the jurisdiction of the State Department of State Hospitals and at each institution under the jurisdiction of the State Department of Developmental Services, a fund known as the patients' personal deposit fund. Any funds coming into the possession of the superintendent, belonging to any patient in that institution, shall be deposited in the name of that patient in the patients' personal deposit fund, except that if a guardian or conservator of the estate is appointed for the patient then he or she shall have the right to demand and receive the funds. Whenever the sum belonging to any one patient, deposited in the patients' personal deposit fund, exceeds the sum of five hundred dollars ($500), the excess may be applied to the payment of the care, support, maintenance, and medical attention of the patient. After the death of the patient any sum remaining in his or her personal deposit account in excess of burial costs may be applied for payment of care, support, maintenance, and medical attention. Any of the funds belonging to a patient deposited in the patients' personal deposit fund may be used for the purchase of personal incidentals for the patient or may be applied in an amount not exceeding five hundred dollars ($500) to the payment of his or her burial expenses.

(Amended by Stats. 2012, Ch. 24, Sec. 170. (AB 1470) Effective June 27, 2012.)

7282. The State Department of State Hospitals with respect to a state hospital under its jurisdiction, or the State Department of Developmental Services with respect to a state hospital under its jurisdiction, may in its own name bring an action to enforce payment for the cost and charges of transportation of a person to a state hospital against any person, guardian, conservator, or relative liable for transportation. The department also may in its own name bring an action to recover for the use and benefit of any state hospital or for the state the amount due for the care, support, maintenance, and expenses of any patient therein, against any county, or officer thereof, or against any person, guardian, conservator, or relative, liable for the care, support, maintenance, or expenses.

(Amended by Stats. 2012, Ch. 24, Sec. 171. (AB 1470) Effective June 27, 2012.)

7282.1. If a person who is or has been a recipient of services provided by the State Department of Developmental Services or the State Department of State Hospitals in a state hospital, or the guardian, conservator, or personal representative of the person, brings an action or claim against a third party for an injury, disorder, or disability, which resulted in the need for care, maintenance, or treatment in a state hospital, the person or the guardian, conservator, or personal representative shall within 30 days of filing the action or claim give to the Director of Developmental Services, for hospitals under the jurisdiction of the State Department of Developmental Services, or the Director of State Hospitals, for hospitals under the jurisdiction of the State Department of State Hospitals, written notice of the action or claim and of the name of the court or agency in which the action or claim is to be brought. Proof of the notice shall be filed in the action or claim. For pending actions or claims filed prior to January 1, 1986, proof of the notice shall be filed by February 1, 1986.

Any judgment, award, or settlement arising out of the action or claim shall be subject to a lien in favor of the Director of Developmental Services or the Director of State Hospitals, for hospitals under the jurisdiction of that department, for the cost of state hospital care and treatment furnished with respect to the subject of the action or claim, however:

(a) A lien shall not attach to that portion of a money judgment awarded for pain and suffering.

(b) A lien shall not attach if over 180 days has elapsed between the time when notice was given to the department and the time when the department has filed its lien with the court or agency in which the action or claim has been brought.

(c) A lien authorized by this section shall not be placed for services which have been paid through the state Medi–Cal program.

(d) This section shall not apply to actions or claims in which a final judgment, award, or settlement has been entered into prior to January 1, 1986.

(Amended by Stats. 2012, Ch. 24, Sec. 172. (AB 1470) Effective June 27, 2012.)

7283. All moneys collected by the State Department of State Hospitals and the State Department of Developmental Services for the cost and charges of transportation of persons to state hospitals shall be remitted by the department to the State Treasury for credit to, and shall become a part of, the current appropriation from the General Fund of the state for the transportation of persons with mental health disorders, correctional school, or other state hospital patients and shall be available for expenditure for those purposes. In lieu of exact calculations of moneys collected for transportation charges the department may determine the amount of collections by the use of those estimates or formula as approved by the Department of Finance.

(Amended by Stats. 2014, Ch. 144, Sec. 123. (AB 1847) Effective January 1, 2015.)

7288. Whenever it appears that a person who has been admitted to a state institution and remains under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services does not have a guardian or conservator of the estate and owns personal property which requires safekeeping for the benefit of the patient, the State Department of State Hospitals or the State Department of Developmental Services may remove or cause to be removed the personal property from wherever located to a place of safekeeping.

Whenever it appears that the patient does not own property of a value which would warrant guardianship or conservatorship proceedings, the expenses of removal and safekeeping shall be paid from funds appropriated for the support of the institution in which the patient is receiving care and treatment; provided, however, that if the sum on deposit to the credit of the patient in the patients' personal deposit fund exceeds the sum of three hundred dollars ($300), the excess may be applied to the payment of the expenses of removal and safekeeping.

When it is determined by the superintendent, at any time after the removal for safekeeping of the personal property, that the patient is incurable or is likely to remain in a state institution indefinitely, then any of those articles of personal property which cannot be used by the patient at the institution may be sold at public auction and the proceeds therefrom shall first be applied in reimbursement of the

expenses so incurred, and the balance shall be deposited to the patient's credit in the patients' personal deposit fund. All moneys so received as reimbursement shall be deposited in the State Treasury in augmentation of the appropriation from which the expenses were paid.

(Amended by Stats. 2012, Ch. 24, Sec. 178. (AB 1470) Effective June 27, 2012.)

7289. When a person who is a client of a state hospital or developmental center in the State Department of State Hospitals or the State Department of Developmental Services has no guardian or conservator of the estate and has money due or owing to him or her, the executive director of the institution of which the person is a client may, during the client's residence at the institution, collect an amount not to exceed three thousand dollars ($3,000) of any money so due or owing upon furnishing to the person, representative, officer, body or corporation in possession of or owing any sums, an affidavit executed by the executive director or acting executive director. The affidavit shall contain the name of the institution of which the person is a client, and the statement that the total amount requested pursuant to the affidavit does not exceed the sum of three thousand dollars ($3,000). Payments from retirement systems and annuity plans which are due or owing to the clients may also be collected by the executive director of the institution of which the person is a client, upon the furnishing of an affidavit executed by the executive director or acting executive director, containing the name of the institution of which the person is a client and the statement that the person is entitled to receive the payments. These sums shall be delivered to the executive director and shall be deposited by him or her in the clients' personal deposit fund as provided in Section 7281.

The receipt of the executive director shall constitute sufficient acquittance for any payment of money made pursuant to this section and shall fully discharge the person, representative, officer, body or corporation from any further liability with reference to the amount of money so paid.

The executive director of each institution shall render reports and accounts annually or more often as may be required by the department having jurisdiction over the hospital or the Department of Finance of all moneys of clients deposited in the clients' personal deposit accounts of the institution.

(Amended by Stats. 2012, Ch. 24, Sec. 179. (AB 1470) Effective June 27, 2012.)

7289.1. (a) The amount of three thousand dollars ($3,000) as set forth in Section 7289, shall be adjusted annually, on January 1 by the State Department of Developmental Services as it applies to state hospitals or developmental centers under its jurisdiction, and by the State Department of State Hospitals as it applies to state hospitals under its jurisdiction, to reflect any increases or decreases in the cost of living occurring after December 31, 1967, so that the first adjustment becomes effective January 1, 1990. The indices of the California Consumer Price Index—All Urban as prepared by the Department of Industrial Relations, shall be used as the basis for determining the changes in the cost of living.

(b) In implementing the cost–of–living provisions of this section, the State Department of Developmental Services and the State Department of State Hospitals shall use the most recent December for computation of the percentage change in the

cost of living after December 31, 1967. The amount of this adjustment shall be made by comparing the average index for the most recent December with the average index for December 1967. The product of any percentage increase or decrease in the average index and the amount set forth in Section 7289 shall be the adjusted amount subject to affidavit pursuant to the provisions of Section 7289.

(Amended by Stats. 2012, Ch. 24, Sec. 180. (AB 1470) Effective June 27, 2012.)

7290. The State Department of State Hospitals or the State Department of Developmental Services may enter into a special agreement, secured by a properly executed bond, with the relatives, guardian, conservator, or friend of any patient therein, for his or her care, support, maintenance, or other expenses at the institution. Such agreement and bond shall be to the people of the State of California and action to enforce the same may be brought thereon by the department. All charges due under the provisions of this section, including the monthly rate for the patient's care and treatment as established by or pursuant to law, shall be collected monthly. No patient, however, shall be permitted to occupy more than one room in any state institution.

(Amended by Stats. 2012, Ch. 24, Sec. 181. (AB 1470) Effective June 27, 2012.)

Article 5. Transfer of Patients

(Article 5 added by Stats. 1967, Ch. 1667.)

7303. Whenever a person, committed to the care of the State Department of State Hospitals or the State Department of Developmental Services under one of the commitment laws which provides for reimbursement for care and treatment to the state by the county of commitment of the person, is transferred under Section 7300 to an institution under the jurisdiction of the department where the state rather than the county is liable for the support and care of patients, the county of commitment may have the original commitment vacated and a new commitment issued, designating the institution to which the person has been transferred, in order to absolve the county from liability under the original commitment.

(Amended by Stats. 2012, Ch. 24, Sec. 187. (AB 1470) Effective June 27, 2012.)

7304. Whenever a person, committed to the State Department of State Hospitals or the State Department of Developmental Services under one of the commitment laws providing for no reimbursement for care and treatment to the state by the county of commitment, is transferred under Section 6700 to an institution under the jurisdiction of the department where the county is required to reimburse the state for such care and treatment, the State Department of State Hospitals or the State Department of Developmental Services may have the original commitment vacated and a new commitment issued, designating the institution to which the person has been transferred, in order to make the county liable for the care and treatment of the committed person to the extent provided by Sections 7511 and 7512.

(Amended by Stats. 2012, Ch. 24, Sec. 188. (AB 1470) Effective June 27, 2012.)

7325. (a) When any patient committed by a court to a state hospital or other institution on or before June 30, 1969, or when any patient who is judicially committed on or after July 1, 1969, or when any patient who is involuntarily

detained pursuant to Part 1 (commencing with Section 5000) of Division 5 escapes from any state hospital, any hospital or facility operated by or under the Veterans' Administration of the United States government, or any facility designated by a county pursuant to Part 1 (commencing with Section 5000) of Division 5, or any facility into which the patient has been placed by his or her conservator appointed pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5, or when a judicially committed patient's return from leave of absence has been authorized or ordered by the State Department of State Hospitals, or the State Department of Developmental Services, or the facility of the Veterans' Administration, any peace officer, upon written request of the state hospital, veterans' facility, or the facility designated by a county, or the patient's conservator appointed pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5, shall, without the necessity of a warrant or court order, or any officer or employee of the State Department of State Hospitals, or of the State Department of Developmental Services, designated to perform these duties may, apprehend, take into custody, and deliver the patient to the state hospital or to a facility of the Veterans' Administration, or the facility designated by a county, or to any person or place authorized by the State Department of State Hospitals, the State Department of Developmental Services, the Veterans' Administration, the local director of the county mental health program of the county in which is located the facility designated by the county, or the patient's conservator appointed pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5, as the case may be, to receive him or her. Every officer or employee of the State Department of State Hospitals, or of the State Department of Developmental Services, designated to apprehend or return those patients has the powers and privileges of peace officers so far as necessary to enforce this section.

(b) As used in this section, "peace officer" means a person as specified in Section 830.1 of the Penal Code.

(c) Any officer or employee of a state hospital, hospital or facility operated by or under the Veterans' Administration, or any facility designated by a county pursuant to Part 1 (commencing with Section 5000) of Division 5 shall provide any peace officer with any information concerning any patient who escapes from the hospital or facility that is necessary to assist in the apprehension and return of the patient. The written notification of the escape required by this section shall include the name and physical description of the patient, his or her home address, the degree of dangerousness of the patient, including specific information about the patient if he or she is deemed likely to cause harm to himself or herself or to others, and any additional information that is necessary to apprehend and return the patient. If the escapee has been charged with any crime involving physical harm to children, the notice shall be provided by the law enforcement agency to school districts in the vicinity of the hospital or other facility in which the escapee was being held, in the area the escapee is known or is likely to frequent, and in the area where the escapee resided immediately prior to confinement.

(d) The person in charge of the hospital or facility, or his or her designee, may provide telephonic notification of the escape to the law enforcement agency of the county or city in which the hospital or facility is located. If that notification is

given, the time and date of notification, the person notified, and the person making the notification shall be noted in the written notification required by this section.

(e) Photocopying is not required in order to satisfy the requirements of this section.

(f) No public or private entity or public or private employee shall be liable for damages caused, or alleged to be caused, by the release of information or the failure to release information pursuant to this section.

(Amended by Stats. 2012, Ch. 24, Sec. 189. (AB 1470) Effective June 27, 2012.)

7328. Whenever a person who is committed to an institution subject to the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services, under one of the commitment laws that provides for reimbursement for care and treatment to the state by the county of commitment of the person, is accused of committing a crime while confined in the institution and is committed by the court in which the crime is charged to another institution under the jurisdiction of the State Department of State Hospitals or the Department of Corrections and Rehabilitation, the state rather than the county of commitment shall bear the subsequent cost of supporting and caring for the person.

(Amended by Stats. 2012, Ch. 24, Sec. 190. (AB 1470) Effective June 27, 2012.)

Article 7. Leave of Absence, Discharge, and Restoration to Capacity of Persons Other Than the Mentally Disordered Criminals

(Article 7 added by Stats. 1967, Ch. 1667.)

7352.5. The medical director of a state hospital for the developmentally disabled may grant a leave of absence to any developmentally disabled patient or judicially committed patient, except as provided in Section 7350, under general conditions prescribed by the State Department of Developmental Services.

The State Department of Developmental Services may continue to render services to patients placed on leave of absence prior to July 1, 1969, to the extent such services are authorized by law in effect immediately preceding July 1, 1969.

(Added by Stats. 1977, Ch. 1252.)

7354.5. Any developmentally disabled person may be granted care in a licensed institution or other suitably licensed or certified facility. The State Department of Developmental Services may pay for such care at a rate not exceeding the average cost of care of patients in the state hospitals as determined by the Director of Developmental Services. Such payments shall be made from funds available to the State Department of Developmental Services for that purpose.

The State Department of Developmental Services may make payments for services for developmentally disabled patients in private facilities released or discharged from state hospitals on the basis of reimbursement for reasonable cost, using the same standards and rates consistent with those established by the State Department of Developmental Services for similar types of care. Such payments shall be made within the limitation of funds appropriated to the State Department of Developmental Services for that purpose. No payments for care or services of a developmentally disabled person shall be made by the State Department of Developmental Services pursuant to this section, unless requested by the regional

center having jurisdiction over the patient and provision for such care or services is made in the areawide plan for the developmentally disabled.

(Amended by Stats. 1978, Ch. 429.)

7356. The charges for the care and keeping of persons on leave of absence from a state hospital where the State Department of State Hospitals, the State Department of Developmental Services, or the State Department of Social Services pays for the care shall be a liability of the person, his or her estate, and relatives, to the same extent that the liability exists for patients in state hospitals.

The State Department of State Hospitals shall collect or adjust the charges in accordance with Article 4 (commencing with Section 7275) of Chapter 3 of this division.

(Amended by Stats. 2012, Ch. 24, Sec. 195. (AB 1470) Effective June 27, 2012.)

CHAPTER 3. STATE HOSPITALS FOR THE DEVELOPMENTALLY DISABLED

(Heading of Chapter 3 renumbered from Chapter 4 by Stats. 1979, Ch. 373.)

7500. There are established in the state the following state hospitals for the care and treatment of persons with developmental disabilities:

(a) Sonoma State Hospital, in Sonoma County.
(b) Lanterman State Hospital, in Los Angeles County.
(c) Porterville State Hospital, in Tulare County.
(d) Fairview State Hospital, in Orange County.

(Amended by Stats. 2014, Ch. 144, Sec. 132. (AB 1847) Effective January 1, 2015.)

7501. (a) The Department of General Services, in cooperation with the State Department of Developmental Services and the State Department of State Hospitals, may sell or lease property within the boundaries of Camarillo State Hospital described in subdivision (b) to Ventura County which shall sublet the property to a nonprofit organization for the purpose of constructing and operating a children's crisis care center to provide an alternative to emergency shelter home placement. The facility shall provide for an interagency program for the delivery of medical, educational, and mental health screening, crisis intervention, short–term mental health treatment, and case management services for children who are removed from their families due to abuse, neglect, abandonment, sexual molestation, or who are in acute mental health crisis requiring short–term nonhospital care and supervision described in subdivision (c).

(b) (1) The property is a 22.8 acre portion of Rancho Guadalasca, in the County of Ventura, State of California, as described in the Letters of Patent dated September 1, 1873, recorded in Book 1, Page 153 of Patents, in the office of the County Recorder of the county and described as follows:

Beginning at the northwesterly terminus of the Fourth Course of that parcel described in the deed recorded on June 9, 1932, in Book 358, Page 371 of Official Records, in said Recorder's Office; thence, along said Fourth Course,

1st — South 47°23'33" East 1150.00 feet to the northeasterly terminus of the 38th Course of Parcel 1 described in the deed recorded on April 17, 1973, in Book 4101, Page 237 of said Official Records;

thence, along said 38th Course,

2nd — South 42°37'00" West 1026.00 feet; thence, parallel with the First Course herein,

3rd — North 47°23'33" West 800.00 feet; thence, parallel with the Second Course herein,

4th — North 42°37'00" East 666.00 feet; thence, parallel with the First Course herein,

5th — North 47°23'33" West 350.00 feet to the intersection with the Third Course of said parcel described in the deed recorded in Book 358, Page 371 of said Official Records; thence, along said Third Course,

6th — North 42°37'00" East 360.00 feet to the point of beginning.

(2) Notwithstanding any other provision of this section, if the parcel described in this subdivision is purchased or leased from the state, 50 percent of the proceeds shall accrue to the State Department of State Hospitals and 50 percent to the Department of Developmental Services.

(3) The Department of General Services may enter into a sale or lease at less than fair market value. The department is authorized to lease the parcel for not less than 40, but not more than 99 years.

(c) Any of the following children are eligible for placement in the children's crisis care center:

(1) Any child who has been placed in protective custody and legally detained under Section 300 as a victim of abuse, neglect, or abandonment. The child shall be one day through 17 years of age. An infant born suffering from the result of perinatal substance abuse, or an infant who requires shelter care because of physical abuse resulting in a cast on the arm or leg shall also be eligible.

(2) Any dependent minor of the juvenile court whose placement has been disrupted, and who is in need of temporary placement, as well as crisis intervention and assessment services.

(3) Any voluntarily placed emotionally disturbed child in crisis as determined appropriate by the mental health case manager. The purpose of this placement is to deescalate the crisis, provide assessment and diagnostic services for a recommendation of appropriate treatment and ongoing placement, and to reduce the utilization of private or state psychiatric hospitalization.

(4) Any eligible child who is a resident of any county in California, subject to the availability of space.

(Amended by Stats. 2012, Ch. 440, Sec. 72. (AB 1488) Effective September 22, 2012.)

7501.5. (a) The Department of General Services, in cooperation with the State Department of Developmental Services and the State Department of State Hospitals, may lease property within the boundaries of Camarillo State Hospital described in subdivision (c) to Ventura County, which may sublet the property to one or more responsible organizations selected by Ventura County for the purposes of constructing housing or operating residential care services, or both, designed to

meet the identified treatment and rehabilitation needs of persons with mental health disorders from Ventura County. The lease between the state and Ventura County shall contain a provision that requires that the lease shall terminate and that full title, possession, and control of the property shall return to the state if permits have not been issued for construction of the housing prior to January 1, 1995. The sublease between Ventura County and the responsible bidder shall contain a provision that requires that permits for construction of the housing be issued prior to January 1, 1995, and shall contain a provision that requires that the sublease shall terminate and full title, possession, and control of the property shall return to the state if permits have not been issued for construction of the housing prior to January 1, 1995.

(b) In selecting a service provider pursuant to subdivision (a), Ventura County shall only consider a sublease with organizations that comply with subdivision (b) of Section 5705 and Section 523 of Title 9 of the California Code of Regulations.

(c) (1) The property consists of a 15 plus acre portion of a 58.5 acre parcel at Camarillo State Hospital that has previously been declared surplus by the State Department of Developmental Services. The acreage is on Lewis Road at the entrance to Camarillo State Hospital. Specific metes and bounds shall be established for the 15 plus acre parcel prior to the actual lease of the property.

(2) The Department of General Services may enter into a lease at less than fair market value. The department is authorized to lease the parcel for not less than 40 and not more than 99 years.

(d) If there is available space, persons who have mental health disorders from Los Angeles, San Luis Obispo, and Santa Barbara Counties may be eligible for placement at this center if an agreement to that effect is entered into between those counties and Ventura County. The agreement shall specify that Los Angeles, San Luis Obispo, and Santa Barbara Counties shall retain responsibility for monitoring and maintenance of persons with mental health disorders who are placed through those agreements and for payment of costs incurred or services rendered by Ventura County.

(Amended by Stats. 2014, Ch. 144, Sec. 133. (AB 1847) Effective January 1, 2015.)

7502. The state institution, the site for which was provided for by an appropriation made by Chapter 28 of the 55th (Fourth Extraordinary Session) Session of the Legislature, shall be known as Porterville State Hospital and shall be used for epileptics who are developmentally disabled and for other developmentally disabled patients.

(Amended by Stats. 1977, Ch. 1252.)

7502.5. (a) An individual may be admitted to the secure treatment facility at Porterville Developmental Center, as provided in paragraphs (1) and (3) of subdivision (a) of Section 7505, only when all of the following conditions are satisfied:

(1) The unit to which the individual will be admitted is approved for occupancy and licensed.

(2) The population of the secure treatment facility is no more than 211 persons.

(3) The individual is at least 18 years of age.

(4) The regional center notifies the regional resource development project identified in Section 4418.7, the regional center clients' rights advocate, the individual, or the individual's legal guardian or conservator, as appropriate, of a potential admission pursuant to paragraphs (1) and (3) of subdivision (a) of Section 7505.

(5) The regional resource development project completes an assessment of the individual's services and supports needs, including by visiting the consumer, if appropriate. The assessment shall include consideration of placement options and other necessary services and supports, if any, that could meet the individual's needs in the community.

(b) An individual may be admitted to the transitional treatment program at Porterville Developmental Center when all of the following conditions are satisfied:

(1) The individual was admitted to Porterville Developmental Center pursuant to paragraphs (1) and (3) of subdivision (a) of Section 7505.

(2) The individual remains eligible for commitment pursuant to paragraph (3) of subdivision (a) of Section 7505.

(3) The unit to which the individual will be admitted is approved for occupancy and licensed.

(4) The population of the transitional treatment program is no more than 60 persons.

(c) As soon as possible, but no later than 30 days following admission to the transitional treatment program, the regional center, in coordination with the developmental center, shall do both of the following:

(1) Complete a comprehensive assessment that shall include the identification of services and supports needed to transition the individual to the community.

(2) Jointly convene an individual program plan meeting to discuss the comprehensive assessment and develop a plan to transition the individual to the community pursuant to Section 4418.3. The transition plan shall be based upon the individual's needs, developed through the individual program plan process, and shall ensure that needed services and supports will be in place at the time the individual moves. Individual supports and services shall include, when appropriate for the individual, wrap–around services through intensive individualized support services. The transition shall be to a community living arrangement that is in the least restrictive environment appropriate to the needs of the individual and most protective of the individual's rights to dignity, freedom, and choice as described in subdivision (a) of Section 4648. The clients' rights advocate for the regional center shall be notified of the individual program plan meeting and may participate in the meeting unless the consumer objects on his or her own behalf.

(d) An individual described in this section shall not be placed in the transitional treatment program for longer than necessary to procure a less restrictive placement. Each year, pursuant to Section 4418.25, an individual in the transitional treatment program at Porterville Developmental Center shall receive an updated comprehensive assessment that shall include all of the following:

(1) The reason or reasons for placement in the program for longer than one year.

(2) A description of the issue or issues preventing community placement.

(3) The estimated timeframe for placement in the community and the plan for that placement.

(e) On or before March 1, 2016, and March 1 of each year thereafter, the department shall provide the following information to the appropriate policy and fiscal committees of the Legislature:

(1) For each regional center, the number of transitional program residents who are placed in the program for more than one year.

(2) A description of reasons for placement in the program beyond one year.

(3) The steps undertaken to resolve the issue or issues prohibiting community placement.

(4) The additional steps necessary before community placement can be made.

(f) (1) Prior to issuing a request for proposal for a contract to provide the intensive transitional services for individuals residing in the secure treatment program at Porterville Developmental Center, the department shall consult with the appropriate professionals to develop the parameters for the services to be provided in the contract. The department shall also consult with the protection and advocacy agency described in subdivision (i) of Section 4900 regarding appropriate safeguards for the protection of clients' rights. The department shall ensure that the services are not punitive, are protective of the individual's rights to dignity, freedom, and choice, and are tailored to the needs of the individual and developed through a person–centered planning process and whether the transition and placement are adequate for the protection and safety of others from the dangers posed by the individual's known behaviors and for the welfare of the individual. The department shall further ensure that the regional center clients' rights advocate receives notice of each individual program plan meeting in which the intensive transitional supports are discussed and a copy of any assessment regarding the individual's intensive support needs, and shall ensure that if the individual disagrees with the proposed intensive transitional supports, he or she may request a fair hearing pursuant to Section 4710.5.

(2) By December 31, 2018, the department shall promulgate emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) regarding the intensive transitional services for individuals residing in the secure treatment program at Porterville Developmental Center. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(Amended by Stats. 2018, Ch. 50, Sec. 5. (SB 853) Effective June 27, 2018.)

7502.6. (a) Notwithstanding any other law or regulation, commencing with the effective date of this section and until June 30, 2021, a court may order the commitment of an individual to a separate and distinct unit of Canyon Springs Community Facility, as provided in paragraph (4) of subdivision (a) of Section 7505. No more than 10 beds at the facility shall be designated for this purpose.

(b) Prior to admission to Canyon Springs Community Facility of an individual meeting the criteria of paragraph (4) of subdivision (a) of Section 7505, the regional center and regional resource development project shall follow the preadmission

procedures, including notification and assessment procedures, specified in subdivisions (a) to (c), inclusive, of Section 4418.7. Upon admission, the postadmission procedures and timelines specified in subdivision (e) of Section 4418.7 shall apply.

(Added by Stats. 2018, Ch. 884, Sec. 3. (SB 175) Effective September 28, 2018.)

7503. The object of each hospital is such care, treatment, habilitation, training, and education of the persons committed thereto as will render them more comfortable and happy and better fitted to care for and support themselves.

(Amended by Stats. 1971, Ch. 1040.)

7504. Except as otherwise provided in this chapter the provisions on state institutions in Chapter 2 (commencing with Section 4100) of Part 1 of Division 5 of this code shall apply to the state hospitals for the developmentally disabled.

(Amended by Stats. 1977, Ch. 1252.)

7505. (a) Notwithstanding any other law, the State Department of Developmental Services shall not admit anyone to a developmental center unless the person has been determined eligible for services under Division 4.5 (commencing with Section 4500) and the person is any of the following:

(1) An adult committed by a court to Porterville Developmental Center, secure treatment program, pursuant to Section 1370.1 of the Penal Code.

(2) Committed by a court to the acute crisis center at Fairview Developmental Center, or the acute crisis center at Sonoma Developmental Center, pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 due to an acute crisis, pursuant to Section 4418.7.

(3) An adult committed by a court to Porterville Developmental Center, secure treatment program, pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 as a result of involvement with the criminal justice system, and the court has determined the person is mentally incompetent to stand trial.

(4) A person committed by a court on or before June 30, 2021, to Canyon Springs Community Facility pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 who otherwise meets the criteria for admission described in Section 4418.7 due to an acute crisis, as defined in paragraph (1) of subdivision (d) of Section 4418.7.

(5) A person described in Section 4508.

(b) Under no circumstances shall the State Department of Developmental Services admit a person to a developmental center after July 1, 2012, as a result of a criminal conviction or when the person is competent to stand trial for the criminal offense and the admission is ordered in lieu of trial.

(Amended by Stats. 2018, Ch. 884, Sec. 4. (SB 175) Effective September 28, 2018.)

7506. The primary purpose of each hospital for the developmentally disabled shall be the care, treatment and habilitation of those patients found suitable and duly admitted.

(Amended by Stats. 1977, Ch. 1252.)

7507. Subject to the provisions of Sections 6509 and 7505, each developmental center shall admit persons duly committed or transferred thereto in accordance with law.

(Amended by Stats. 2012, Ch. 25, Sec. 33. (AB 1472) Effective June 27, 2012.)

7509. The State Department of State Hospitals and the State Department of Developmental Services shall prescribe and publish instructions and forms, in relation to the commitment and admission of patients, and may include in them any interrogatories as it deems necessary or useful. These instructions and forms shall be furnished to anyone applying therefor, and shall also be sent in sufficient numbers to the county clerks of the several counties of the state.

(Amended by Stats. 2012, Ch. 440, Sec. 74. (AB 1488) Effective September 22, 2012.)

7513. Each developmentally disabled person and his or her estate shall pay the State Department of Developmental Services for the cost of such person's care and treatment as defined in Section 4431 while in a state hospital and while on leave of absence at state expense, less the sums payable therefor by the county. The provisions of Sections 7513.1 and 7513.2 shall govern the assessment, cancellation, collection, and remission of charges for such care and treatment.

This section shall not be construed to impose any liability on the parents of developmentally disabled persons.

(Amended by Stats. 1979, Ch. 1142.)

7513.1. The charge for the care and treatment of all developmentally disabled persons at state hospitals for the developmentally disabled for whom there is liability to pay therefor shall be determined pursuant to Section 4431. The Director of Developmental Services may reduce, cancel, or remit the amount to be paid by the person, estate, or the relative, as the case may be, liable for the care and treatment of any developmentally disabled person who is a patient at a state hospital for the developmentally disabled, on satisfactory proof that the person, estate, or relative, as the case may be, is unable to pay the cost of such care and treatment or that the amount is uncollectible. In any case where there has been a payment under this section, and such payment or any part thereof is refunded because of the death, leave of absence, or discharge of any patient of such hospital, such amount shall be paid by the hospital or the State Department of Developmental Services to the person who made the payment upon demand, and in the statement to the Controller the amounts refunded shall be itemized and the aggregate deducted from the amount to be paid into the State Treasury, as provided by law. If any person dies at any time while his or her estate is liable for his or her care and treatment at a state hospital, the claim for the amount due may be presented to the executor or administrator of his or her estate, and paid as a preferred claim, with the same rank in order of preference, as claims for expenses of last illness.

(Added by Stats. 1979, Ch. 1142.)

7513.2. The State Department of Developmental Services shall collect all the costs and charges mentioned in Section 7513 and may take such action as is necessary to effect their collection within or without the state. The Director of Developmental Services may, however, at his or her discretion, refuse to accept

payment of charges for the care and treatment in a state hospital of any developmentally disabled person who is eligible for deportation by the federal immigration authorities.

(Added by Stats. 1979, Ch. 1142.)

7514. The State Department of Developmental Services may transfer any patient of a state hospital for the developmentally disabled to another state hospital for the developmentally disabled, at any time and from time to time, upon the application of the parent, guardian, conservator, or other person charged with the support of such patient, if the expenses of the transfer are paid by the applicant. The liability of any estate, person, or county for the care, support and maintenance of such patient in the institution to which he is transferred shall be the same as if he had originally been committed to such institution.

(Amended by Stats. 1979, Ch. 730.)

7515. The medical director may, with the approval of the department having jurisdiction, cause the peremptory discharge of any person who has been a patient for the period of one month.

(Amended by Stats. 2006, Ch. 538, Sec. 699. Effective January 1, 2007.)

7516. Nothing in this division contained interferes with or affects the status of such patients as are now in the Sonoma State Hospital under terms of life tenure.

(Added by Stats. 1967, Ch. 1667.)

7518. In accordance with this section, the medical director of a state hospital with programs for developmentally disabled patients, as defined in Section 4512, may give consent to medical, dental, and surgical treatment of a minor developmentally disabled patient of the hospital and provide for such treatment to be given to the patient.

If the patient's parent, guardian, or conservator legally authorized to consent to such treatment, does not respond within a reasonable time to the request of the medical director for the granting or denying of consent for such treatment, the medical director may consent, on behalf of the patient, to such treatment and provide for such treatment to be given to the patient.

If the patient has no parent, guardian, or conservator legally authorized to consent to medical, dental, or surgical treatment on behalf of the patient, the medical director may consent to such treatment on behalf of the patient and provide for such treatment to be given to the patient. The medical director may immediately thereupon also request the appropriate regional center for the developmentally disabled to initiate or cause to be initiated proceedings for the appointment of a guardian or conservator legally authorized to consent to medical, dental, or surgical treatment.

If the patient is an adult and has no conservator, consent to treatment may be given by someone other than the patient on the patient's behalf only if the patient is mentally incapable of giving his own consent.

(Amended by Stats. 1979, Ch. 730.)

EXCERPTS FROM PENAL CODE

PART 2. OF CRIMINAL PROCEDURE

(Part 2 enacted 1872.)

TITLE 10. MISCELLANEOUS PROCEEDINGS

(Title 10 enacted 1872.)

CHAPTER 6. INQUIRY INTO THE COMPETENCE OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION

(Heading of Chapter 6 amended by Stats. 1980, Ch. 547, Sec. 6.5.)

1367. (a) A person cannot be tried or adjudged to punishment or have his or her probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. A defendant is mentally incompetent for purposes of this chapter if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.

(b) Section 1370 shall apply to a person who is charged with a felony or alleged to have violated the terms of probation for a felony or mandatory supervision and is incompetent as a result of a mental disorder. Section 1370.01 shall apply to a person who is charged with a misdemeanor or misdemeanors only, or a violation of formal or informal probation for a misdemeanor, and the judge finds reason to believe that the defendant is mentally disordered, and may, as a result of the mental disorder, be incompetent to stand trial. Section 1370.1 shall apply to a person who is incompetent as a result of a developmental disability and shall apply to a person who is incompetent as a result of a mental disorder, but is also developmentally disabled. Section 1370.02 shall apply to a person alleged to have violated the terms of his or her postrelease community supervision or parole.

(Amended by Stats. 2014, Ch. 759, Sec. 1. (SB 1412) Effective January 1, 2015.)

1368. (a) If, during the pendency of an action and prior to judgment, or during revocation proceedings for a violation of probation, mandatory supervision, postrelease community supervision, or parole, a doubt arises in the mind of the judge as to the mental competence of the defendant, he or she shall state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent. If the defendant is not represented by counsel, the court shall appoint counsel. At the request of the defendant or his or her counsel or upon its own motion, the court shall recess the proceedings for as long as may be reasonably necessary to permit counsel to confer with the defendant and to form an opinion as to the mental competence of the defendant at that point in time.

(b) If counsel informs the court that he or she believes the defendant is or may be mentally incompetent, the court shall order that the question of the defendant's

mental competence is to be determined in a hearing which is held pursuant to Sections 1368.1 and 1369. If counsel informs the court that he or she believes the defendant is mentally competent, the court may nevertheless order a hearing. Any hearing shall be held in the superior court.

(c) Except as provided in Section 1368.1, when an order for a hearing into the present mental competence of the defendant has been issued, all proceedings in the criminal prosecution shall be suspended until the question of the present mental competence of the defendant has been determined.

If a jury has been impaneled and sworn to try the defendant, the jury shall be discharged only if it appears to the court that undue hardship to the jurors would result if the jury is retained on call.

If the defendant is declared mentally incompetent, the jury shall be discharged.

(Amended by Stats. 2014, Ch. 759, Sec. 3. (SB 1412) Effective January 1, 2015.)

1368.1. (a) (1) If the action is on a complaint charging a felony, proceedings to determine mental competence shall be held prior to the filing of an information unless the counsel for the defendant requests a preliminary examination under Section 859b. At the preliminary examination, counsel for the defendant may either demur, move to dismiss the complaint on the ground that there is not reasonable cause to believe that a felony has been committed and that the defendant is guilty thereof, or make a motion under Section 1538.5. A proceeding to determine mental competence or a request for a preliminary examination pursuant to this paragraph does not preclude a request for a determination of probable cause pursuant to paragraph (2).

(2) If the action is on a complaint charging a felony involving death, great bodily harm, or a serious threat to the physical well–being of another person, the prosecuting attorney may, at any time before or after a defendant is determined incompetent to stand trial, request a determination of probable cause to believe the defendant committed the offense or offenses alleged in the complaint, solely for the purpose of establishing that the defendant is gravely disabled pursuant to subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, pursuant to procedures approved by the court. In making this determination, the court shall consider using procedures consistent with the manner in which a preliminary examination is conducted. A finding of probable cause shall only be made upon the presentation of evidence sufficient to satisfy the standard set forth in subdivision (a) of Section 872. The defendant shall be entitled to a preliminary hearing after the restoration of his or her competence. A request for a determination of probable cause pursuant to this paragraph does not preclude a proceeding to determine mental competence or a request for a preliminary examination pursuant to paragraph (1).

(b) If the action is on a complaint charging a misdemeanor, counsel for the defendant may either demur, move to dismiss the complaint on the ground that there is not reasonable cause to believe that a public offense has been committed and that the defendant is guilty thereof, or make a motion under Section 1538.5.

(c) If the proceeding involves an alleged violation of probation, mandatory supervision, postrelease community supervision, or parole, counsel for the defendant may move to reinstate supervision on the ground that there is not

probable cause to believe that the defendant violated the terms of his or her supervision.

(d) In ruling upon any demurrer or motion described in subdivision (a), (b), or (c), the court may hear any matter which is capable of fair determination without the personal participation of the defendant.

(e) A demurrer or motion described in subdivision (a), (b), or (c) shall be made in the court having jurisdiction over the complaint. The defendant shall not be certified until the demurrer or motion has been decided.

(Amended by Stats. 2017, Ch. 246, Sec. 1. (SB 684) Effective January 1, 2018.)

1369. Except as stated in subdivision (g), a trial by court or jury of the question of mental competence shall proceed in the following order:

(a) (1) The court shall appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant. If the defendant or the defendant's counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two psychiatrists, licensed psychologists, or a combination thereof. One of the psychiatrists or licensed psychologists may be named by the defense and one may be named by the prosecution.

(2) The examining psychiatrists or licensed psychologists shall evaluate the nature of the defendant's mental disorder, if any, the defendant's ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder and, if within the scope of their licenses and appropriate to their opinions, whether or not treatment with antipsychotic medication is medically appropriate for the defendant and whether antipsychotic medication is likely to restore the defendant to mental competence. If an examining psychologist is of the opinion that antipsychotic medication may be medically appropriate for the defendant and that the defendant should be evaluated by a psychiatrist to determine if antipsychotic medication is medically appropriate, the psychologist shall inform the court of this opinion and his or her recommendation as to whether a psychiatrist should examine the defendant. The examining psychiatrists or licensed psychologists shall also address the issues of whether the defendant has capacity to make decisions regarding antipsychotic medication and whether the defendant is a danger to self or others. If the defendant is examined by a psychiatrist and the psychiatrist forms an opinion as to whether or not treatment with antipsychotic medication is medically appropriate, the psychiatrist shall inform the court of his or her opinions as to the likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, and whether it is medically appropriate to administer antipsychotic medication in the county jail.

(3) If it is suspected the defendant has a developmental disability, the court shall appoint the director of the regional center established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, or the director's designee, to examine the defendant to determine whether he or she has a developmental disability. The regional center director or his or her designee shall determine whether the defendant has a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code, and is therefore eligible for

regional center services and supports. The regional center director or his or her designee shall provide the court with a written report informing the court of this determination.

(4) The regional center director shall recommend to the court a suitable residential facility or state hospital. Prior to issuing an order pursuant to this section, the court shall consider the recommendation of the regional center director. While the person is confined pursuant to order of the court under this section, he or she shall be provided with necessary care and treatment.

(b) (1) The counsel for the defendant shall offer evidence in support of the allegation of mental incompetence.

(2) If the defense declines to offer any evidence in support of the allegation of mental incompetence, the prosecution may do so.

(c) The prosecution shall present its case regarding the issue of the defendant's present mental competence.

(d) Each party may offer rebutting testimony, unless the court, for good reason in furtherance of justice, also permits other evidence in support of the original contention.

(e) When the evidence is concluded, unless the case is submitted without final argument, the prosecution shall make its final argument and the defense shall conclude with its final argument to the court or jury.

(f) In a jury trial, the court shall charge the jury, instructing them on all matters of law necessary for the rendering of a verdict. It shall be presumed that the defendant is mentally competent unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent. The verdict of the jury shall be unanimous.

(g) Only a court trial is required to determine competency in a proceeding for a violation of probation, mandatory supervision, postrelease community supervision, or parole.

(h) (1) The State Department of State Hospitals, on or before July 1, 2017, shall adopt guidelines for education and training standards for a psychiatrist or licensed psychologist to be considered for appointment by the court pursuant to this section. To develop these guidelines, the State Department of State Hospitals shall convene a workgroup comprised of the Judicial Council and groups or individuals representing judges, defense counsel, district attorneys, counties, advocates for people with developmental and mental disabilities, state psychologists and psychiatrists, professional associations and accrediting bodies for psychologists and psychiatrists, and other interested stakeholders.

(2) When making an appointment pursuant to this section, the court shall appoint an expert who meets the guidelines established in accordance with this subdivision or an expert with equivalent experience and skills. If there is no reasonably available expert who meets the guidelines or who has equivalent experience and skills, the court may appoint an expert who does not meet the guidelines.

(Amended by Stats. 2018, Ch. 1008, Sec. 1. (SB 1187) Effective January 1, 2019.)

1369.1. (a) As used in this chapter, "treatment facility" includes a county jail. Upon the concurrence of the county board of supervisors, the county mental health director, and the county sheriff, the jail may be designated to provide medically

approved medication to defendants found to be mentally incompetent and unable to provide informed consent due to a mental disorder, pursuant to this chapter. In the case of Madera, Napa, and Santa Clara Counties, the concurrence shall be with the board of supervisors, the county mental health director, and the county sheriff or the chief of corrections. The provisions of Sections 1370, 1370.01, and 1370.02 shall apply to antipsychotic medications provided in a county jail, provided, however, that the maximum period of time a defendant may be treated in a treatment facility pursuant to this section shall not exceed six months.

(b) This section does not abrogate or limit any law enacted to ensure the due process rights set forth in Sell v. United States (2003) 539 U.S. 166.

(Amended by Stats. 2015, Ch. 26, Sec. 29. (SB 85) Effective June 24, 2015.)

1370. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged or hearing on the alleged violation shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent, the trial, the hearing on the alleged violation, or the judgment shall be suspended until the person becomes mentally competent.

(i) The court shall order that the mentally incompetent defendant be delivered by the sheriff to a State Department of State Hospitals facility, as defined in Section 4100 of the Welfare and Institutions Code, as directed by the State Department of State Hospitals, or to any other available public or private treatment facility, including a community–based residential treatment system established pursuant to Article 1 (commencing with Section 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and Institutions Code if the facility has a secured perimeter or a locked and controlled treatment facility, approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a State Department of State Hospitals facility, as directed by the State Department of State Hospitals, or other secure treatment facility for the care and treatment of persons with a mental health disorder, unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release

would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a State Department of State Hospitals facility, as directed by the State Department of State Hospitals, unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) If, at any time after the court finds that the defendant is mentally incompetent and before the defendant is transported to a facility pursuant to this section, the court is provided with any information that the defendant may benefit from diversion pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, the court may make a finding that the defendant is an appropriate candidate for diversion.

(v) If a defendant is found by the court to be an appropriate candidate for diversion pursuant to clause (iv), the defendant's eligibility shall be determined pursuant to Section 1001.36. A defendant granted diversion may participate for the lesser of the period specified in paragraph (1) of subdivision (c) or two years. If, during that period, the court determines that criminal proceedings should be reinstated pursuant to subdivision (d) of Section 1001.36, the court shall, pursuant to Section 1369, appoint a psychiatrist, licensed psychologist, or any other expert the court may deem appropriate, to determine the defendant's competence to stand trial.

(vi) Upon the dismissal of charges at the conclusion of the period of diversion, pursuant to subdivision (e) of Section 1001.36, a defendant shall no longer be deemed incompetent to stand trial pursuant to this section.

(vii) The clerk of the court shall notify the Department of Justice, in writing, of a finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

(D) A defendant charged with a violent felony may not be delivered to a State Department of State Hospitals facility or treatment facility pursuant to this subdivision unless the State Department of State Hospitals facility or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(E) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(F) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others. If the court places a defendant charged with a violent felony on outpatient status, as specified in Section 1600, the court shall serve copies of the placement order on defense counsel, the sheriff in the county where the defendant will be placed, and the district attorney for the county in which the violent felony charges are pending against the defendant.

(G) If, at any time after the court has declared a defendant incompetent to stand trial pursuant to this section, counsel for the defendant or a jail medical or mental health staff provider provides the court with substantial evidence that the defendant's psychiatric symptoms have changed to such a degree as to create a doubt in the mind of the judge as to the defendant's current mental incompetence, the court may appoint a psychiatrist or a licensed psychologist to opine as to whether the defendant has regained competence. If, in the opinion of that expert, the defendant has regained competence, the court shall proceed as if a certificate of restoration of competence has been returned pursuant to paragraph (1) of subdivision (a) of Section 1372, except that a presumption of competency shall not apply and a hearing shall be held to determine whether competency has been restored.

(2) Prior to making the order directing that the defendant be committed to the State Department of State Hospitals or other treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) The court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or be committed to the State Department of State Hospitals or to any other treatment facility. A person shall not be admitted to a State Department of State Hospitals facility or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee. The community program director or designee shall evaluate the appropriate placement for the defendant between a State Department of State Hospitals facility or the community–based residential treatment system based upon guidelines provided by the State Department of State Hospitals.

(B) The court shall hear and determine whether the defendant lacks capacity to make decisions regarding the administration of antipsychotic medication. The court shall consider opinions in the reports prepared pursuant to subdivision (a) of Section 1369, as applicable to the issue of whether the defendant lacks capacity to make decisions regarding the administration of antipsychotic medication, and shall proceed as follows:

(i) The court shall hear and determine whether any of the following is true:

(I) The defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in his or her being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

(III) The people have charged the defendant with a serious crime against the person or property, involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial, the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner, less intrusive treatments are unlikely to have substantially the same results, and antipsychotic medication is in the patient's best medical interest in light of his or her medical condition.

(ii) If the court finds any of the conditions described in clause (i) to be true, the court shall issue an order authorizing involuntary administration of antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist at any facility housing the defendant for purposes of this chapter. The order shall be valid for no more than one year, pursuant to subparagraph (A) of paragraph (7). The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (i) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (i) and does not meet the criteria under subclause (II) of clause (i).

(iii) In all cases, the treating hospital, facility, or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.

(iv) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication, and if the defendant, with advice of his or her counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(v) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication and if the defendant, with advice from his or her counsel, does not consent, the court order for commitment shall indicate

that, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(vi) A report made pursuant to paragraph (1) of subdivision (b) shall include a description of antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a State Department of State Hospitals facility or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the State Department of State Hospitals facility or other treatment facility, shall have the right to contact the patients' rights advocate regarding his or her rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (iv) of subparagraph (B), but subsequently withdraws his or her consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (v) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication based on the conditions described in subclause (I) or (II) of clause (i) of subparagraph (B), the treating psychiatrist shall certify whether the lack of capacity and any applicable conditions described above exist. That certification shall contain an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate.

(D) (i) If the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate pursuant to subparagraph (C), antipsychotic medication may be administered to the defendant for not more than 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment. The treating psychiatrist shall present the case for the certification for involuntary treatment and the defendant shall be represented by an attorney or a patients' rights advocate. The attorney or patients' rights advocate shall be appointed to meet with the defendant no later than one day prior to the medication review hearing to review the defendant's rights at the medication review hearing, discuss the process, answer questions or concerns regarding involuntary medication or the hearing, assist the defendant in preparing for the hearing and advocating for his or her interests at the hearing, review the panel's final determination following the hearing, advise the defendant of his or her right to judicial review of the panel's decision, and provide

the defendant with referral information for legal advice on the subject. The defendant shall also have the following rights with respect to the medication review hearing:

(I) To be given timely access to the defendant's records.

(II) To be present at the hearing, unless the defendant waives that right.

(III) To present evidence at the hearing.

(IV) To question persons presenting evidence supporting involuntary medication.

(V) To make reasonable requests for attendance of witnesses on the defendant's behalf.

(VI) To a hearing conducted in an impartial and informal manner.

(ii) If the administrative law judge determines that the defendant either meets the criteria specified in subclause (I) of clause (i) of subparagraph (B), or meets the criteria specified in subclause (II) of clause (i) of subparagraph (B), antipsychotic medication may continue to be administered to the defendant for the 21–day certification period. Concurrently with the treating psychiatrist's certification, the treating psychiatrist shall file a copy of the certification and a petition with the court for issuance of an order to administer antipsychotic medication beyond the 21–day certification period. For purposes of this subparagraph, the treating psychiatrist shall not be required to pay or deposit any fee for the filing of the petition or other document or paper related to the petition.

(iii) If the administrative law judge disagrees with the certification, medication may not be administered involuntarily until the court determines that antipsychotic medication should be administered pursuant to this section.

(iv) The court shall provide notice to the prosecuting attorney and to the attorney representing the defendant, and shall hold a hearing, no later than 18 days from the date of the certification, to determine whether antipsychotic medication should be ordered beyond the certification period.

(v) If, as a result of the hearing, the court determines that antipsychotic medication should be administered beyond the certification period, the court shall issue an order authorizing the administration of that medication.

(vi) The court shall render its decision on the petition and issue its order no later than three calendar days after the hearing and, in any event, no later than the expiration of the 21–day certification period.

(vii) If the administrative law judge upholds the certification pursuant to clause (ii), the court may, for a period not to exceed 14 days, extend the certification and continue the hearing pursuant to stipulation between the parties or upon a finding of good cause. In determining good cause, the court may review the petition filed with the court, the administrative law judge's order, and any additional testimony needed by the court to determine if it is appropriate to continue medication beyond the 21–day certification and for a period of up to 14 days.

(viii) The district attorney, county counsel, or representative of a facility where a defendant found incompetent to stand trial is committed may petition the court for an order to administer involuntary medication pursuant to the criteria set forth in subclauses (II) and (III) of clause (i) of subparagraph (B). The order is reviewable as provided in paragraph (7).

(3) When the court orders that the defendant be committed to a State Department of State Hospitals facility or other public or private treatment facility, the court shall provide copies of the following documents prior to the admission of the defendant to the State Department of State Hospitals or other treatment facility where the defendant is to be committed:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(D) State summary criminal history information.

(E) Arrest reports prepared by the police department or other law enforcement agency.

(F) Court–ordered psychiatric examination or evaluation reports.

(G) The community program director's placement recommendation report.

(H) Records of a finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or a pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(I) Medical records.

(4) When the defendant is committed to a treatment facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a treatment facility other than a State Department of State Hospitals facility or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the placement facility of a finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5) When directing that the defendant be confined in a State Department of State Hospitals facility pursuant to this subdivision, the court shall commit the patient to the State Department of State Hospitals.

(6) (A) If the defendant is committed or transferred to the State Department of State Hospitals pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the State Department of State Hospitals facility and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, transfer the defendant to the State Department of State Hospitals or to another public or private treatment facility approved by the community program director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). If either the defendant or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court

determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(B) If the defendant is initially committed to a State Department of State Hospitals facility or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(7) (A) An order by the court authorizing involuntary medication of the defendant shall be valid for no more than one year. The court shall review the order at the time of the review of the initial report and the six–month progress reports pursuant to paragraph (1) of subdivision (b) to determine if the grounds for the authorization remain. In the review, the court shall consider the reports of the treating psychiatrist or psychiatrists and the defendant's patients' rights advocate or attorney. The court may require testimony from the treating psychiatrist and the patients' rights advocate or attorney, if necessary. The court may continue the order authorizing involuntary medication for up to another six months, or vacate the order, or make any other appropriate order.

(B) Within 60 days before the expiration of the one–year involuntary medication order, the district attorney, county counsel, or representative of any facility where a defendant found incompetent to stand trial is committed may petition the committing court for a renewal, subject to the same conditions and requirements as in subparagraph (A). The petition shall include the basis for involuntary medication set forth in clause (i) of subparagraph (B) of paragraph (2). Notice of the petition shall be provided to the defendant, the defendant's attorney, and the district attorney. The court shall hear and determine whether the defendant continues to meet the criteria set forth in clause (i) of subparagraph (B) of paragraph (2). The hearing on a petition to renew an order for involuntary medication shall be conducted prior to the expiration of the current order.

(8) For purposes of subparagraph (D) of paragraph (2) and paragraph (7), if the treating psychiatrist determines that there is a need, based on preserving his or her rapport with the patient or preventing harm, the treating psychiatrist may request that the facility medical director designate another psychiatrist to act in the place of the treating psychiatrist. If the medical director of the facility designates another psychiatrist to act pursuant to this paragraph, the treating psychiatrist shall brief the acting psychiatrist of the relevant facts of the case and the acting psychiatrist shall examine the patient prior to the hearing.

(b) (1) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the State Department of State Hospitals facility or other

treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication remains necessary. If the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community program director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the community program director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the State Department of State Hospitals facility or other treatment facility or on outpatient status. Thereafter, at six–month intervals or until the defendant becomes mentally competent, if the defendant is confined in a treatment facility, the medical director of the State Department of State Hospitals facility or person in charge of the facility shall report, in writing, to the court and the community program director or a designee regarding the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication remains necessary. If the defendant is on outpatient status, after the initial 90–day report, the outpatient treatment staff shall report to the community program director on the defendant's progress toward recovery, and the community program director shall report to the court on this matter at six–month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court.

(A) If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c) no later than 10 days following receipt of the report. The court shall transmit a copy of its order to the community program director or a designee.

(B) If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the medical director of the State Department of State Hospitals facility or other treatment facility to which the defendant is confined shall do both of the following:

(i) Promptly notify and provide a copy of the report to the defense counsel and the district attorney.

(ii) Provide a separate notification, in compliance with applicable privacy laws, to the committing county's sheriff that transportation will be needed for the patient.

(2) If the court has issued an order authorizing the treating facility to involuntarily administer antipsychotic medication to the defendant, the reports made pursuant to paragraph (1) concerning the defendant's progress toward regaining competency shall also consider the issue of involuntary medication. Each report shall include, but not be limited to, all of the following:

(A) Whether or not the defendant has the capacity to make decisions concerning antipsychotic medication.

(B) If the defendant lacks capacity to make decisions concerning antipsychotic medication, whether the defendant risks serious harm to his or her physical or mental health if not treated with antipsychotic medication.

(C) Whether or not the defendant presents a danger to others if he or she is not treated with antipsychotic medication.

(D) Whether the defendant has a mental disorder for which medications are the only effective treatment.

(E) Whether there are any side effects from the medication currently being experienced by the defendant that would interfere with the defendant's ability to collaborate with counsel.

(F) Whether there are any effective alternatives to medication.

(G) How quickly the medication is likely to bring the defendant to competency.

(H) Whether the treatment plan includes methods other than medication to restore the defendant to competency.

(I) A statement, if applicable, that no medication is likely to restore the defendant to competency.

(3) After reviewing the reports, the court shall determine whether or not grounds for the order authorizing involuntary administration of antipsychotic medication still exist and shall do one of the following:

(A) If the original grounds for involuntary medication still exist, the order authorizing the treating facility to involuntarily administer antipsychotic medication to the defendant shall remain in effect.

(B) If the original grounds for involuntary medication no longer exist, and there is no other basis for involuntary administration of antipsychotic medication, the order for the involuntary administration of antipsychotic medication shall be vacated.

(C) If the original grounds for involuntary medication no longer exist, and the report states that there is another basis for involuntary administration of antipsychotic medication, the court shall set a hearing within 21 days to determine whether the order for the involuntary administration of antipsychotic medication shall be vacated or whether a new order for the involuntary administration of antipsychotic medication shall be issued. The hearing shall proceed as set forth in subparagraph (B) of paragraph (2) of subdivision (a).

(4) If it is determined by the court that treatment for the defendant's mental impairment is not being conducted, the defendant shall be returned to the committing court. The court shall transmit a copy of its order to the community program director or a designee.

(5) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination. If the court determines that the defendant shall continue to be treated in the State Department of State Hospitals facility or on an outpatient basis, the court shall determine issues concerning administration of antipsychotic medication, as set forth in subparagraph (B) of paragraph (2) of subdivision (a).

(c) (1) At the end of two 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, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, whichever is shorter, but no later than 90 days prior to the expiration of the defendant's term of commitment, a defendant who has not recovered mental competence shall be returned to the committing court. The court shall notify the community program director or a designee of the return and of any resulting court orders.

(2) Whenever a defendant is returned to the court pursuant to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (A) or (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a designee, the sheriff and the district attorney of the county in which criminal charges are pending, and the defendant's counsel of record. The court shall notify the community program director or a designee, the sheriff and district attorney of the county in which criminal charges are pending, and the defendant's counsel of record of the outcome of the conservatorship proceedings.

(3) If a change in placement is proposed for a defendant who is committed pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall provide notice and an opportunity to be heard with respect to the proposed placement of the defendant to the sheriff and the district attorney of the county in which the criminal charges or revocation proceedings are pending.

(4) If the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(d) With the exception of proceedings alleging a violation of mandatory supervision, the criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee. In a proceeding alleging a violation of mandatory supervision, if the person is not placed under a conservatorship as described in paragraph (2) of subdivision (c), or if a conservatorship is terminated, the court shall reinstate mandatory supervision and may modify the terms and conditions of supervision to include appropriate mental health treatment or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant.

(e) If the criminal action against the defendant is dismissed, the defendant shall be released from commitment ordered under this section, but without prejudice to

the initiation of proceedings that may be appropriate under the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department of State Hospitals pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, "secure treatment facility" does not include, except for State Department of State Hospitals facilities, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

(h) This section does not preclude a defendant from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing a treatment facility or outpatient program to involuntarily administer antipsychotic medication to a person being treated as incompetent to stand trial.

(Amended by Stats. 2018, Ch. 1008, Sec. 2. (SB 1187) Effective January 1, 2019.)

1370.01. (a) (1) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced. If the defendant is found mentally incompetent, the trial, judgment, or hearing on the alleged violation shall be suspended until the person becomes mentally competent, and the court shall order that (A) in the meantime, the defendant be delivered by the sheriff to an available public or private treatment facility approved by the county mental health director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in this section, and (B) upon the filing of a certificate of restoration to competence, the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the county mental health director or his or her designee.

(2) If the defendant is found mentally incompetent, the court may make a finding that the defendant is an appropriate candidate for diversion pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, and may, if the defendant is eligible pursuant to Section 1001.36, grant diversion for a period not to exceed that set forth in paragraph (1) of subdivision (c). Upon the dismissal of charges at the conclusion of the period of diversion, pursuant to subdivision (e) of Section 1001.36, a defendant shall no longer be deemed incompetent to stand trial pursuant to this section.

(3) Prior to making the order directing that the defendant be confined in a treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) The court shall order the county mental health director or his or her designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to a treatment facility. No person shall be admitted to a treatment facility or placed on outpatient status under this section without having been evaluated by the county mental health director or his or her designee. No person shall be admitted to a state hospital under this section unless

the county mental health director finds that there is no less restrictive appropriate placement available and the county mental health director has a contract with the State Department of State Hospitals for these placements.

(B) The court shall hear and determine whether the defendant, with advice of his or her counsel, consents to the administration of antipsychotic medication, and shall proceed as follows:

(i) If the defendant, with advice of his or her counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with this subdivision regarding whether antipsychotic medication shall be administered involuntarily.

(ii) If the defendant does not consent to the administration of medication, the court shall hear and determine whether any of the following is true:

(I) The defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in his or her being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

(III) The people have charged the defendant with a serious crime against the person or property; involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial; the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner; less intrusive treatments are unlikely to have substantially the same results; and antipsychotic medication is in the patient's best medical interest in light of his or her medical condition.

(iii) If the court finds any of the conditions described in clause (ii) to be true, the court shall issue an order authorizing the treatment facility to involuntarily administer antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist. The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (ii) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (ii) and does not meet the criteria under subclause (II) of clause (ii).

(iv) In all cases, the treating hospital, facility, or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.

(v) Any report made pursuant to subdivision (b) shall include a description of any antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a state hospital or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the state hospital or other treatment facility, shall have the right to contact the patients' rights advocate regarding his or her rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (i) of subparagraph (B), but subsequently withdraws his or her consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (ii) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication as specified in subclause (I) of clause (ii) of subparagraph (B), or that the defendant is a danger to others as specified in subclause (II) of clause (ii) of subparagraph (B), the committing court shall be notified of this, including an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate. The court shall provide copies of the report to the prosecuting attorney and to the attorney representing the defendant and shall set a hearing to determine whether involuntary antipsychotic medication should be ordered in the manner described in subparagraph (B).

(4) When the court, after considering the placement recommendation of the county mental health director required in paragraph (3), orders that the defendant be confined in a public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the treatment facility where the defendant is to be confined:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(D) State summary criminal history information.

(E) Any arrest reports prepared by the police department or other law enforcement agency.

(F) Any court–ordered psychiatric examination or evaluation reports.

(G) The county mental health director's placement recommendation report.

(5) A person subject to commitment under this section may be placed on outpatient status under the supervision of the county mental health director or his or her designee by order of the court in accordance with the procedures contained in Title 15 (commencing with Section 1600) except that where the term "community program director" appears the term "county mental health director" shall be substituted.

(6) If the defendant is committed or transferred to a public or private treatment facility approved by the county mental health director, the court may, upon receiving the written recommendation of the county mental health director, transfer the defendant to another public or private treatment facility approved by the county mental health director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code. Where either the defendant or the prosecutor chooses to contest the order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the county mental health director or his or her designee.

(b) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the treatment facility to which the defendant is confined shall make a written report to the court and the county mental health director or his or her designee, concerning the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the county mental health director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the county mental health director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the treatment facility or on outpatient status. Thereafter, at six–month intervals or until the defendant becomes mentally competent, where the defendant is confined in a treatment facility, the medical director of the hospital or person in charge of the

facility shall report in writing to the court and the county mental health director or a designee regarding the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, after the initial 90–day report, the outpatient treatment staff shall report to the county mental health director on the defendant's progress toward recovery, and the county mental health director shall report to the court on this matter at six–month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court. If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the county mental health director or his or her designee.

(c) (1) If, at the end of one year from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter, the defendant has not recovered mental competence, the defendant shall be returned to the committing court. The court shall notify the county mental health director or his or her designee of the return and of any resulting court orders.

(2) Whenever any defendant is returned to the court pursuant to subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or his or her designee and shall notify the county mental health director or his or her designee of the outcome of the proceedings.

(d) The criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the county mental health director or his or her designee.

(e) If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings which may be appropriate under Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(Amended by Stats. 2018, Ch. 34, Sec. 26. (AB 1810) Effective June 27, 2018.)

1370.015. A person committed to the care of the State Department of State Hospitals because he or she is incompetent to stand trial or to be adjudged to punishment is eligible for compassionate release pursuant to Section 4146 of the Welfare and Institutions Code. In any case in which the criteria for compassionate release apply, the State Department of State Hospitals shall follow the procedures and standards in Section 4146 of the Welfare and Institutions Code to determine if

the department should recommend to the court that the person's commitment for treatment and the underlying criminal charges be suspended for compassionate release.

(Added by Stats. 2016, Ch. 715, Sec. 2. (SB 955) Effective January 1, 2017.)

1370.02. (a) If the defendant is found mentally competent during a postrelease community supervision or parole revocation hearing, the revocation proceedings shall resume. The formal hearing on the revocation shall occur within a reasonable time after resumption of the proceedings, but in no event may the defendant be detained in custody for over 180 days from the date of arrest.

(b) If the defendant is found mentally incompetent, the court shall dismiss the pending revocation matter and return the defendant to supervision. If the revocation matter is dismissed pursuant to this subdivision, the court may, using the least restrictive option to meet the mental health needs of the defendant, also do any of the following:

(1) Modify the terms and conditions of supervision to include appropriate mental health treatment.

(2) Refer the matter to any local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant.

(3) Refer the matter to the public guardian of the county of commitment to initiate conservatorship proceedings pursuant to Sections 5352 and 5352.5 of the Welfare and Institutions Code. The public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. The court shall order the matter to the public guardian pursuant to this paragraph only if there are no other reasonable alternatives to the establishment of a conservatorship to meet the mental health needs of the defendant.

(c) (1) Notwithstanding any other law, if a person subject to parole pursuant to Section 3000.1 or paragraph (4) of subdivision (b) of Section 3000 is found mentally incompetent, the court shall order the parolee to undergo treatment pursuant to Section 1370 for restoring the person to competency, except that if the parolee is not restored to competency within the maximum period of confinement and the court dismisses the revocation, the court shall return the parolee to parole supervision.

(2) If the parolee is returned to parole supervision, the court may, using the least restrictive option to meet the mental health needs of the parolee, do any of the following:

(A) Modify the terms and conditions of parole to include appropriate mental health treatment.

(B) Refer the matter to any local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the parolee.

(C) Refer the matter to the public guardian of the county of commitment to initiate conservatorship proceedings pursuant to Sections 5352 and 5352.5 of the Welfare and Institutions Code. The public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. The court shall order the matter to the public guardian pursuant

to this subparagraph only if there are no other reasonable alternatives to the establishment of a conservatorship to meet the mental health needs of the parolee.

(d) If a conservatorship is established for a defendant or parolee pursuant to subdivision (b) or (c), the county or the Department of Corrections and Rehabilitation shall not compassionately release the defendant or parolee or otherwise cause the termination of his or her supervision or parole based on the establishment of that conservatorship.

(Added by Stats. 2014, Ch. 759, Sec. 9. (SB 1412) Effective January 1, 2015.)

1370.1. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged or hearing on the alleged violation shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent and has been determined by a regional center to have a developmental disability, the trial or judgment shall be suspended until the defendant becomes mentally competent.

(i) Except as provided in clause (ii) or (iii), the court shall consider a recommendation for placement. The recommendation shall be made to the court by the director of a regional center or the director's designee. In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff or other person designated by the court to a state hospital, developmental center, or any other available residential facility approved by the director of a regional center 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).

(ii) When the action against a defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of an offense specified in Section 290. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of persons with developmental disabilities unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of persons with developmental disabilities unless the court makes specific findings on the

record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice, in writing, of a finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon becoming competent, the court shall order that the defendant be returned to the committing court pursuant to the procedures set forth in paragraph (2) of subdivision (a) of Section 1372 or by another person designated by the court. The court shall further determine conditions under which the person may be absent from the placement for medical treatment, social visits, and other similar activities. Required levels of supervision and security for these activities shall be specified.

(D) The court shall transmit a copy of its order to the regional center director or the director's designee and to the Director of Developmental Services.

(E) A defendant charged with a violent felony may not be placed in a facility or delivered to a state hospital, developmental center, or residential facility pursuant to this subdivision unless the facility, state hospital, developmental center, or residential facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(F) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(G) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1370.4 or 1600, only if the court finds that the placement will not pose a danger to the health or safety of others.

(H) As used in this section, "developmental disability" has the same meaning as in Section 4512 of the Welfare and Institutions Code.

(2) Prior to making the order directing that the defendant be confined in a state hospital, developmental center, or other residential facility, or be placed on outpatient status, the court shall order the regional center director or the director's designee to evaluate the defendant and to submit to the court, within 15 judicial days of the order, a written recommendation as to whether the defendant should be committed to a state hospital, a developmental center, or to any other available residential facility approved by the regional center director. A person shall not be admitted to a state hospital, developmental center, or other residential facility or accepted for outpatient status under Section 1370.4 without having been evaluated by the regional center director or the director's designee.

(3) If the court orders that the defendant be confined in a state hospital or other secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall provide copies of the following documents, which shall be taken with the defendant to the state hospital or other secure treatment facility where the defendant is to be confined:

(A) State summary criminal history information.

(B) Any arrest reports prepared by the police department or other law enforcement agency.

(C) Records of a finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or a pending

Section 1368 proceeding arising out of a charge of an offense specified in Section 290.

(4) When the defendant is committed to a residential facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of a finding of mental incompetence pursuant to this chapter arising out of a charge of an offense specified in Section 290.

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

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

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

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the regional center director or designee.

(B) If the defendant is committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to another facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to the new facility. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b) (1) Within 90 days of admission of a person committed pursuant to subdivision (a), the executive director or the director's designee of the state hospital, developmental center, or other facility to which the defendant is committed, shall make a written report to the committing court and the regional

center director or a designee concerning the defendant's progress toward becoming mentally competent. If the defendant is placed on outpatient status, this report shall be made to the committing court by the regional center director or the director's designee. If the defendant has not become mentally competent, but the report discloses a substantial likelihood the defendant will become mentally competent within the next 90 days, the court may order that the defendant remain in the state hospital, developmental center, or other facility or on outpatient status for that period of time. Within 150 days of an admission made pursuant to subdivision (a), or if the defendant becomes mentally competent, the executive director or the director's designee of the state hospital, developmental center, or other facility to which the defendant is committed shall report to the court and the regional center director or the director's designee regarding the defendant's progress toward becoming mentally competent. If the defendant is placed on outpatient status, the regional center director or the director's designee shall make that report to the committing court. The court shall provide copies of all reports under this section to the prosecutor and defense counsel. If the report indicates that there is no substantial likelihood that the defendant has become mentally competent, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the regional center director or the director's designee and to the executive director of the developmental center.

(2) If it is determined by the court that treatment for the defendant's mental impairment is not 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 the director's designee and to the executive director of the developmental center.

(3) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c) (1) (A) At the end of two 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, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, whichever is shorter, a defendant who has not become mentally competent shall be returned to the committing court.

(B) The court shall notify the regional center director or the director's designee and the executive director of the developmental center of that return and of any resulting court orders.

(2) (A) Except as provided in subparagraph (B), in the event of dismissal of the criminal charges before the defendant becomes mentally competent, the defendant shall be subject to the applicable provisions of the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), or to commitment and detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code. If it is found that the person is not subject to commitment or detention pursuant to the applicable provision of the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or

detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code, the individual shall not be subject to further confinement pursuant to this article and the criminal action remains subject to dismissal pursuant to Section 1385. The court shall notify the regional center director and the executive director of the developmental center of any dismissal.

(B) In revocation proceedings alleging a violation of mandatory supervision in which the defendant remains incompetent upon return to court under subparagraph (A), 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 court shall reinstate mandatory supervision and modify the terms and conditions of supervision to include appropriate mental health treatment or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant. Actions alleging a violation of mandatory supervision are not subject to dismissal under Section 1385.

(d) Except as provided in subparagraph (B) of paragraph (2) of subdivision (c), the criminal action remains subject to dismissal pursuant to Section 1385. If at any time prior to the maximum period of time allowed for proceedings under this article, the regional center director concludes that the behavior of the defendant related to the defendant's criminal offense has been eliminated during time spent in court–ordered programs, the court may, upon recommendation of the regional center director, dismiss the criminal charges. The court shall transmit a copy of any order of dismissal to the regional center director and to the executive director of the developmental center.

(e) For the purpose of this section, "secure treatment facility" does not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, a facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or a community board and care facility.

(Amended by Stats. 2018, Ch. 1008, Sec. 3. (SB 1187) Effective January 1, 2019.)

1370.2. If a person is adjudged mentally incompetent pursuant to the provisions of this chapter, the superior court may dismiss any misdemeanor charge pending against the mentally incompetent person. Ten days notice shall be given to the district attorney of any motion to dismiss pursuant to this section. The court shall transmit a copy of any order dismissing a misdemeanor charge pursuant to this section to the community program director, the county mental health director, or the regional center director and the Director of Developmental Services, as appropriate.

(Amended by Stats. 1992, Ch. 722, Sec. 14. Effective September 15, 1992.)

1370.3. A person committed to a state hospital or other treatment facility under the provisions of this chapter may be placed on outpatient status from such commitment as provided in Title 15 (commencing with Section 1600) of Part 2.

(Repealed and added by Stats. 1980, Ch. 547, Sec. 12.)

1370.4. If, in the evaluation ordered by the court under Section 1370.1, the regional center director, or a designee, is of the opinion that the defendant is not a danger to the health and safety of others while on outpatient treatment and will benefit from such treatment, and has obtained the agreement of the person in charge of a residential facility and of the defendant that the defendant will receive and submit to outpatient treatment and that the person in charge of the facility will designate a person to be the outpatient supervisor of the defendant, the court may order the defendant to undergo outpatient treatment. All of the provisions of Title 15 (commencing with Section 1600) of Part 2 shall apply where a defendant is placed on outpatient status under this section, except that the regional center director shall be substituted for the community program director, the Director of Developmental Services for the Director of State Hospitals, and a residential facility for a treatment facility for the purposes of this section.

(Amended by Stats. 2012, Ch. 440, Sec. 36. (AB 1488) Effective September 22, 2012.)

1370.5. (a) A person committed to a state hospital or other public or private mental health facility pursuant to the provisions of Section 1370, 1370.01, 1370.02, or 1370.1, who escapes from or who escapes while being conveyed to or from a state hospital or facility, is punishable by imprisonment in a county jail not to exceed one year or in the state prison for a determinate term of one year and one day. The term of imprisonment imposed pursuant to this section shall be served consecutively to any other sentence or commitment.

(b) The medical director or person in charge of a state hospital or other public or private mental health facility to which a person has been committed pursuant to the provisions of Section 1370, 1370.01, 1370.02, or 1370.1 shall promptly notify the chief of police of the city in which the hospital or facility is located, or the sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the chief of police or sheriff in apprehending the person, and shall within 48 hours of the escape of the person orally notify the court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.

(Amended by Stats. 2014, Ch. 759, Sec. 11. (SB 1412) Effective January 1, 2015.)

1370.6. (a) If a mentally incompetent defendant is admitted to a county jail treatment facility pursuant to Section 1370, the department shall provide restoration of competency treatment at the county jail treatment facility and shall provide payment to the county jail treatment facility for the reasonable costs of the bed during the restoration of competency treatment as well as for the reasonable costs of any necessary medical treatment not provided within the county jail treatment facility, unless otherwise agreed to by the department and the facility.

(1) If the county jail treatment facility is able to provide restoration of competency services, upon approval by the department and subject to funding appropriated in the annual Budget Act, the county jail treatment facility may

provide those services and the State Department of State Hospitals may provide payment to the county jail treatment facility for the reasonable costs of the bed during the restoration of competency treatment as well as the reasonable costs of providing restoration of competency services and for any necessary medical treatment not provided within the county jail treatment facility, unless otherwise agreed to by the department and the facility.

(2) Transportation to a county jail treatment facility for admission and from the facility upon the filing of a certificate of restoration of competency, or for transfer of a person to another county jail treatment facility or to a state hospital, shall be provided by the committing county unless otherwise agreed to by the department and the facility.

(3) In the event the State Department of State Hospitals and a county jail treatment facility are determined to be comparatively at fault for any claim, action, loss, or damage which results from their respective obligations under such a contract, each shall indemnify the other to the extent of its comparative fault.

(4) The six–month limitation in Section 1369.1 shall not apply to individuals deemed incompetent to stand trial who are being treated to restore competency within a county jail treatment facility pursuant to this section.

(b) If the community–based residential system is selected by the court pursuant to Section 1370, the State Department of State Hospitals shall provide reimbursement to the community–based residential treatment system for the cost of restoration of competency treatment as negotiated with the State Department of State Hospitals.

(c) The State Department of State Hospitals may provide payment to either a county jail treatment facility or a community–based residential treatment system directly through invoice, or through a contract, at the discretion of the department in accordance with the terms and conditions of the contract or agreement.

(Amended by Stats. 2017, Ch. 17, Sec. 31. (AB 103) Effective June 27, 2017.)

1371. The commitment of the defendant, as described in Section 1370, 1370.1, 1370.01, or 1370.02, exonerates his or her bail, or entitles a person, authorized to receive the property of the defendant, to a return of any money he or she may have deposited instead of bail, or gives, to the person or persons found by the court to have deposited any money instead of bail on behalf of the defendant, a right to the return of that money.

(Amended by Stats. 2014, Ch. 759, Sec. 12. (SB 1412) Effective January 1, 2015.)

1372. (a) (1) If the medical director of a state hospital, a person designated by the State Department of State Hospitals at an entity contracted by the department to provide services to a defendant prior to placement in a treatment program or other facility to which the defendant is committed, or the community program director, county mental health director, or regional center director providing outpatient services, determines that the defendant has regained mental competence, the director or designee shall immediately certify that fact to the court by filing a certificate of restoration with the court by certified mail, return receipt requested, or by confidential electronic transmission. For purposes of this section, the date of filing shall be the date on the return receipt.

(2) The court's order committing an individual to a State Department of State Hospitals facility or other treatment facility pursuant to Section 1370 shall include direction that the sheriff shall redeliver the patient to the court without any further order from the court upon receiving from the state hospital or treatment facility a copy of the certificate of restoration.

(3) The defendant shall be returned to the committing court in the following manner:

(A) A patient who remains confined in a state hospital or other treatment facility shall be redelivered to the sheriff of the county from which the patient was committed. The sheriff shall immediately return the person from the state hospital or other treatment facility to the court for further proceedings.

(B) The patient who is on outpatient status shall be returned by the sheriff to court through arrangements made by the outpatient treatment supervisor.

(C) In all cases, the patient shall be returned to the committing court no later than 10 days following the filing of a certificate of restoration. The state shall only pay for 10 hospital days for patients following the filing of a certificate of restoration of competency. The State Department of State Hospitals shall report to the fiscal and appropriate policy committees of the Legislature on an annual basis in February, on the number of days that exceed the 10–day limit prescribed in this subparagraph. This report shall include, but not be limited to, a data sheet that itemizes by county the number of days that exceed this 10–day limit during the preceding year.

(b) If the defendant becomes mentally competent after a conservatorship has been established pursuant to the applicable provisions of the Lanterman–Petris–Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, and Section 1370, the conservator shall certify that fact to the sheriff and district attorney of the county in which the defendant's case is pending, defendant's attorney of record, and the committing court.

(c) When a defendant is returned to court with a certification that competence has been regained, the court shall notify either the community program director, the county mental health director, or the regional center director and the Director of Developmental Services, as appropriate, of the date of any hearing on the defendant's competence and whether or not the defendant was found by the court to have recovered competence.

(d) If the committing court approves the certificate of restoration to competence as to a person in custody, the court shall hold a hearing to determine whether the person is entitled to be admitted to bail or released on own recognizance status pending conclusion of the proceedings. If the superior court approves the certificate of restoration to competence regarding a person on outpatient status, unless it appears that the person has refused to come to court, that person shall remain released either on own recognizance status, or, in the case of a developmentally disabled person, either on the defendant's promise or on the promise of a responsible adult to secure the person's appearance in court for further proceedings. If the person has refused to come to court, the court shall set bail and may place the person in custody until bail is posted.

(e) A defendant subject to either subdivision (a) or (b) who is not admitted to bail or released under subdivision (d) may, at the discretion of the court, upon recommendation of the director of the facility where the defendant is receiving treatment, be returned to the hospital or facility of his or her original commitment or other appropriate secure facility approved by the community program director, the county mental health director, or the regional center director. The recommendation submitted to the court shall be based on the opinion that the person will need continued treatment in a hospital or treatment facility in order to maintain competence to stand trial or that placing the person in a jail environment would create a substantial risk that the person would again become incompetent to stand trial before criminal proceedings could be resumed.

(f) Notwithstanding subdivision (e), if a defendant is returned by the court to a hospital or other facility for the purpose of maintaining competency to stand trial and that defendant is already under civil commitment to that hospital or facility from another county pursuant to the Lanterman–Petris–Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or as a developmentally disabled person committed pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, the costs of housing and treating the defendant in that facility following return pursuant to subdivision (e) shall be the responsibility of the original county of civil commitment.

(Amended by Stats. 2018, Ch. 34, Sec. 27. (AB 1810) Effective June 27, 2018.)

1373. The expense of sending the defendant to the state hospital or other facility, and of bringing him or her back, are chargeable to the county in which the indictment was found, information was filed, or revocation proceeding was held; but the county may recover the expense from the estate of the defendant, if he or she has any, or from a relative, bound to provide for and maintain him or her.

(Amended by Stats. 2014, Ch. 759, Sec. 13. (SB 1412) Effective January 1, 2015.)

1373.5. In every case where a claim is presented to the county for money due under the provisions of section 1373 of this code, interest shall be allowed from the date of rejection, if rejected and recovery is finally had thereon.

(Added by Stats. 1939, Ch. 441.)

1374. When a defendant who has been found incompetent is on outpatient status under Title 15 (commencing with Section 1600) of Part 2 and the outpatient treatment staff is of the opinion that the defendant has recovered competence, the supervisor shall communicate such opinion to the community program director. If the community program director concurs, that opinion shall be certified by such director to the committing court. The court shall calendar the case for further proceeding pursuant to Section 1372.

(Amended by Stats. 1985, Ch. 1232, Sec. 9. Effective September 30, 1985.)

1375. Claims by the state for all amounts due from any county by reason of the provisions of Section 1373 of this code shall be processed and paid by the county pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

(Amended by Stats. 1965, Ch. 263.)

1375.5. (a) Time spent by a person in a treatment facility or county jail as a result of proceedings under this chapter shall be credited against the sentence, if any, imposed in the underlying criminal case or revocation matter giving rise to the competency proceedings.

(b) As used in this section, "time spent in a treatment facility" includes days a person is treated as an outpatient pursuant to Title 15 (commencing with Section 1600) of Part 2.

(c) A person subject to this chapter shall receive credits pursuant to Section 4019 for all time during which he or she is confined in a county jail and for which he or she is otherwise eligible.

(Amended by Stats. 2018, Ch. 1008, Sec. 4. (SB 1187) Effective January 1, 2019.)

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

(b) (1) In any case in which the prosecution seeks the death penalty, the defendant may, at a reasonable time prior to the commencement of trial, apply for an order directing that a hearing to determine intellectual disability be conducted. Upon the submission of a declaration by a qualified expert stating his or her opinion that the defendant is a person with an intellectual disability, the court shall order a hearing to determine whether the defendant is a person with an intellectual disability. At the request of the defendant, the court shall conduct the hearing without a jury prior to the commencement of the trial. The defendant's request for a court hearing prior to trial shall constitute a waiver of a jury hearing on the issue of intellectual disability. If the defendant does not request a court hearing, the court shall order a jury hearing to determine if the defendant is a person with an intellectual disability. The jury hearing on intellectual disability shall occur at the conclusion of the phase of the trial in which the jury has found the defendant guilty with a finding that one or more of the special circumstances enumerated in Section 190.2 are true. Except as provided in paragraph (3), the same jury shall make a finding that the defendant is a person with an intellectual disability or that the defendant does not have an intellectual disability.

(2) For the purposes of the procedures set forth in this section, the court or jury shall decide only the question of the defendant's intellectual disability. The defendant shall present evidence in support of the claim that he or she is a person with an intellectual disability. The prosecution shall present its case regarding the issue of whether the defendant is a person with an intellectual disability. Each party may offer rebuttal evidence. The court, for good cause in furtherance of justice, may permit either party to reopen its case to present evidence in support of or opposition to the claim of intellectual disability. Nothing in this section shall prohibit the court from making orders reasonably necessary to ensure the production of evidence sufficient to determine whether or not the defendant is a person with an intellectual disability, including, but not limited to, the appointment of, and examination of the defendant by, qualified experts. A statement made by the defendant during an examination ordered by the court shall not be admissible in the trial on the defendant's guilt.

(3) At the close of evidence, the prosecution shall make its final argument, and the defendant shall conclude with his or her final argument. The burden of proof shall be on the defense to prove by a preponderance of the evidence that the defendant is a person with an intellectual disability. The jury shall return a verdict that either the defendant is a person with an intellectual disability or the defendant does not have an intellectual disability. The verdict of the jury shall be unanimous. In any case in which the jury has been unable to reach a unanimous verdict that the defendant is a person with an intellectual disability, and does not reach a unanimous verdict that the defendant does not have an intellectual disability, the court shall dismiss the jury and order a new jury impaneled to try the issue of intellectual disability. The issue of guilt shall not be tried by the new jury.

(c) In the event the hearing is conducted before the court prior to the commencement of the trial, the following shall apply:

(1) If the court finds that the defendant is a person with an intellectual disability, the court shall preclude the death penalty and the criminal trial thereafter shall proceed as in any other case in which a sentence of death is not sought by the prosecution. If the defendant is found guilty of murder in the first degree, with a finding that one or more of the special circumstances enumerated in Section 190.2 are true, the court shall sentence the defendant to confinement in the state prison for life without the possibility of parole. The jury shall not be informed of the prior proceedings or the findings concerning the defendant's claim of intellectual disability.

(2) If the court finds that the defendant does not have an intellectual disability, the trial court shall proceed as in any other case in which a sentence of death is sought by the prosecution. The jury shall not be informed of the prior proceedings or the findings concerning the defendant's claim of intellectual disability.

(d) In the event the hearing is conducted before the jury after the defendant is found guilty with a finding that one or more of the special circumstances enumerated in Section 190.2 are true, the following shall apply:

(1) If the jury finds that the defendant is a person with an intellectual disability, the court shall preclude the death penalty and shall sentence the defendant to confinement in the state prison for life without the possibility of parole.

(2) If the jury finds that the defendant does not have an intellectual disability, the trial shall proceed as in any other case in which a sentence of death is sought by the prosecution.

(e) In any case in which the defendant has not requested a court hearing as provided in subdivision (b), and has entered a plea of not guilty by reason of insanity under Sections 190.4 and 1026, the hearing on intellectual disability shall occur at the conclusion of the sanity trial if the defendant is found sane.

(Amended by Stats. 2012, Ch. 457, Sec. 42. (SB 1381) Effective January 1, 2013.)