ASSEMBLY BILL No. 1956

Introduced by Assembly Member Wolk

February 12, 2004

An act to amend Sections 1001.20, 1001.21, 1001.22, and 1001.23 of the Penal Code, relating to diversion.

LEGISLATIVE COUNSEL'S DIGEST

AB 1956, as introduced, Wolk. Diversion: developmentally disabled defendants.

Existing law provides procedures whereby a mentally retarded defendant, who is being prosecuted for an offense charged as, or reduced to, a misdemeanor, and who has not had a case similarly handled within 2 years prior to the current criminal proceedings, can be diverted for treatment and habilitation specifically related to his or her individual developmental needs and the charged offense or offenses. This law provides for conditions, progress monitoring, and specific time periods for the diversion program, and requires either the resumption of the criminal process or the dismissal of the charge or charges at the completion of the program, as specified.

This bill would expand this program's availability by applying it to those persons with cognitive developmental disabilities rather than only mental retardation, a term that would also permit persons with autism, or deficits similar to mental retardation or autism, to enter this diversion program and to receive services under the program. The bill would also make conforming and technical changes in these provisions.

By expanding the availability of a program that provides for services by local probation offices and regional centers for people with

developmental disabilities, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

SECTION 1. Section 1001.20 of the Penal Code is amended to read:

1001.20. As used in this chapter:

(a) ~~"Mentally retarded" means the~~ *"Cognitive Developmental Disability" means any of the following:*

(1) "Mental retardation," meaning a condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(2) "Autism," meaning a condition of markedly abnormal or impaired development in social interaction, in communication, or in both, with a markedly restricted repertoire of activity and interests.

(3) Neurological deficits similar to mental retardation or autism that would qualify an individual for services provided under the Lanterman Developmental Disabilities Services Act.

(b) "Diversion-related treatment and habilitation" means, but is not limited to, specialized services or special adaptations of generic services, directed towards the alleviation of ~~mental retardation~~ *cognitive developmental disability* or towards social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability, and includes, but is not limited

to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, sheltered employment, mental health services, recreation, counseling of the individual with such disability and of his family, protective and other social and socio-legal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to mentally retarded persons.

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

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

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

(f) ''Dual agency diversion'' means a treatment and habilitation program developed with court approval by the regional center, administered jointly by the regional center and by the probation department, which is individually tailored to the needs of the defendant as derived from the defendant's individual program plan pursuant to Section 4646 of the Welfare and Institutions Code, and which includes, but is not limited to, treatment specifically addressed to the criminal offense charged, for a specified period of time as prescribed in Section ~~1001. 28~~ *1001.28*.

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

charged, for a specified period of time as prescribed in Section 1001.28.

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

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

(b) This chapter applies to any offense which is charged as or reduced to a misdemeanor, except that diversion shall not be ordered when the defendant previously has been diverted under this chapter within two years prior to the present criminal proceedings.

SEC. 3. Section 1001.22 of the Penal Code is amended to read:

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

(a) The regional center shall submit a report to the probation department within 25 judicial days of the court's order. The regional center's report shall include a determination as to whether the defendant ~~is mentally retarded~~ *has a cognitive developmental disability* and eligible for regional center diversion-related treatment and habilitation services, and the regional center shall also submit to the court a proposed diversion program,

individually tailored to the needs of the defendant as derived from the defendant's individual program plan pursuant to Section 4646 of the Welfare and Institutions Code, which shall include, but not be limited to, treatment addressed to the criminal offense charged for a period of time as prescribed in Section 1001.28. The regional center's report shall also contain a statement whether such a proposed program is available for the defendant through the treatment and habilitation services of the regional centers pursuant to Section 4648 of the Welfare and Institutions Code.

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

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

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

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

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

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

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

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

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

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

SEC. 4. Section 1001.23 of the Penal Code is amended to read:

1001.23. (a) Upon the court's receipt of the reports from the prosecutor, the probation department, and the regional center, and a determination by the regional center that the defendant ~~is not mentally retarded~~ *does not have a cognitive developmental disability*, the criminal proceedings for the offense charged shall proceed. If the defendant is found ~~to be mentally retarded~~ *have a cognitive developmental disability* and *to be* eligible for regional center services, and the court determines from the various reports submitted to it that the proposed diversion program is acceptable to the court, the prosecutor, the probation department, and the regional center, and if the defendant consents to diversion and waives his or her right to a speedy trial, the court may order, without a hearing, that the diversion program be implemented for a period of time as prescribed in Section ~~1001. 28~~ *1001.28*.

(b) After consideration of the probation department's report, the report of the regional center, and the report of the prosecutor

relating to his or her recommendation for or against diversion, and any other relevant information, the court shall determine if the defendant shall be diverted under either dual or single agency supervision, and referred for habilitation or rehabilitation diversion pursuant to this chapter. If the court does not deem the defendant a person who would benefit by diversion at the time of the hearing, the suspended criminal proceedings may be reinstituted, or such other disposition as authorized by law may be made, and diversion may be ordered at a later date.

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

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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