

AMENDED IN SENATE MARCH 27, 2007

SENATE BILL

No. 866

Introduced by Senator Runner

February 23, 2007

~~An act to amend Section 6600 of the Welfare and Institutions Code, relating to sexually violent predators. An act relating to sexually violent predators, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 866, as amended, Runner. Mental health: sexually violent predators.

Existing law requires, prior to release from the custody of the Department of Corrections and Rehabilitation of a person who has been convicted of certain crimes of a sexual nature, the director to refer that person to the State Department of Mental Health for evaluation if the director determines that person may be a sexually violent predator.

Under existing law, if the evaluation by the State Department of Mental Health determines that the person is a sexually violent predator, the department is required to forward a request for the filing of a petition to the counsel designated by the county in which the person was convicted. The law authorizes civil commitment of the person to the State Department of Mental Health as a sexually violent predator, for treatment in a secure facility, if the person is adjudicated to be likely to engage in sexually violent criminal behavior if discharged.

Existing law, pursuant to an initiative measure, provides that these provisions may not be amended by the Legislature, except by a $\frac{2}{3}$ vote bill, or by a majority vote bill to expand the scope of its application or to increase the punishment or penalties.

This bill would ~~make a technical, nonsubstantive change to these provisions~~ appropriate \$13,506,233 to the State Department of Mental Health for support of this program pursuant to a prescribed schedule, and would approve the department's related information technology project.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

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

1 SECTION 1. The Legislature finds and declares that the
 2 passage of Proposition 83, also known as Jessica's Law, in
 3 November 2006, and the enactment of Senate Bill 1128 (Chapter
 4 337, Statutes of 2006), the Sex Offender Punishment, Control, and
 5 Containment Act of 2006, require the immediate provision of an
 6 appropriation sufficient to meet the new requirements related to
 7 the Sexually Violent Predator (SVP) program. These funds are
 8 required due to a significant increase in the number of potential
 9 SVP's referred to the State Department of Mental Health for
 10 screening and evaluation and for other related purposes. Increases
 11 in the potential SVP population require corresponding increases
 12 in the number and cost of screenings, evaluations, training, court
 13 testimony, administration and information technology data
 14 collection and tracking systems to support the preservation of the
 15 health and safety of the people of California by ensuring that
 16 persons determined to be SVP's are committed to state hospitals
 17 for necessary treatment.

18 SEC. 2. The sum of thirteen million five hundred six thousand
 19 two hundred thirty-three dollars (\$13,506,233) is hereby
 20 appropriated from the General Fund to the State Department of
 21 Mental Health for support of the Sexually Violent Predator
 22 program, provided for pursuant to Article 4 (commencing with
 23 Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare
 24 and Institution Code, as follows:

25 (a) The sum of eleven million nine hundred fifty-seven thousand
 26 two hundred thirty-three dollars (\$11,957,233) to fund the
 27 increased number of SVP screenings, initial evaluations, and expert
 28 court testimony.

1 (b) *The sum of one million five hundred forty-nine thousand*
2 *dollars (\$1,549,000) for administrative support and information*
3 *technology. In providing this funding the Legislature, hereby*
4 *approves the State Department of Mental Health’s sex offender*
5 *commitment program support information technology project.*

6 *SEC. 3. This act is an urgency statute necessary for the*
7 *immediate preservation of the public peace, health, or safety within*
8 *the meaning of Article IV of the Constitution and shall go into*
9 *immediate effect. The facts constituting the necessity are:*

10 *In order to protect the health and safety of the people of*
11 *California, it is necessary that this act take effect immediately.*

12 ~~SECTION 1. Section 6600 of the Welfare and Institutions Code~~
13 ~~is amended to read:~~

14 ~~6600. As used in this article, the following terms have the~~
15 ~~following meanings:~~

16 ~~(a) (1) “Sexually violent predator” means a person who has~~
17 ~~been convicted of a sexually violent offense against one or more~~
18 ~~victims and who has a diagnosed mental disorder that makes the~~
19 ~~person a danger to the health and safety of others in that it is likely~~
20 ~~that he or she will engage in sexually violent criminal behavior.~~

21 ~~(2) For the purposes of this subdivision any of the following~~
22 ~~shall be considered a conviction for a sexually violent offense:~~

23 ~~(A) A prior or current conviction that resulted in a determinate~~
24 ~~prison sentence for an offense described in subdivision (b).~~

25 ~~(B) A conviction for an offense described in subdivision (b)~~
26 ~~that was committed prior to July 1, 1977, and that resulted in an~~
27 ~~indeterminate prison sentence.~~

28 ~~(C) A prior conviction in another jurisdiction for an offense that~~
29 ~~includes all of the elements of an offense described in subdivision~~
30 ~~(b).~~

31 ~~(D) A conviction for an offense under a predecessor statute that~~
32 ~~includes all of the elements of an offense described in subdivision~~
33 ~~(b).~~

34 ~~(E) A prior conviction for which the inmate received a grant of~~
35 ~~probation for an offense described in subdivision (b).~~

36 ~~(F) A prior finding of not guilty by reason of insanity for an~~
37 ~~offense described in subdivision (b).~~

38 ~~(G) A conviction resulting in a finding that the person was a~~
39 ~~mentally disordered sex offender.~~

1 ~~(H) A prior conviction for an offense described in subdivision~~
2 ~~(b) for which the person was committed to the Department of the~~
3 ~~Youth Authority pursuant to Section 1731.5.~~

4 ~~(I) A prior conviction for an offense described in subdivision~~
5 ~~(b) that resulted in an indeterminate prison sentence.~~

6 ~~(3) Conviction of one or more of the crimes enumerated in this~~
7 ~~section shall constitute evidence that may support a court or jury~~
8 ~~determination that a person is a sexually violent predator, but shall~~
9 ~~not be the sole basis for the determination. The existence of any~~
10 ~~prior convictions may be shown with documentary evidence. The~~
11 ~~details underlying the commission of an offense that led to a prior~~
12 ~~conviction, including a predatory relationship with the victim, may~~
13 ~~be shown by documentary evidence, including, but not limited to,~~
14 ~~preliminary hearing transcripts, trial transcripts, probation and~~
15 ~~sentencing reports, and evaluations by the State Department of~~
16 ~~Mental Health. Jurors shall be admonished that they may not find~~
17 ~~a person a sexually violent predator based on prior offenses absent~~
18 ~~relevant evidence of a currently diagnosed mental disorder that~~
19 ~~makes the person a danger to the health and safety of others in that~~
20 ~~it is likely that he or she will engage in sexually violent criminal~~
21 ~~behavior.~~

22 ~~(4) The provisions of this section shall apply to any person~~
23 ~~against whom proceedings were initiated for commitment as a~~
24 ~~sexually violent predator on or after January 1, 1996.~~

25 ~~(b) “Sexually violent offense” means the following acts when~~
26 ~~committed by force, violence, duress, menace, fear of immediate~~
27 ~~and unlawful bodily injury on the victim or another person, or~~
28 ~~threatening to retaliate in the future against the victim or any other~~
29 ~~person, and that are committed on, before, or after the effective~~
30 ~~date of this article and result in a conviction or a finding of not~~
31 ~~guilty by reason of insanity, as defined in subdivision (a): a felony~~
32 ~~violation of Section 261, 262, 264.1, 269, 286, 288, 288a, 288.5,~~
33 ~~or 289 of the Penal Code, or any felony violation of Section 207,~~
34 ~~209, or 220 of the Penal Code, committed with the intent to commit~~
35 ~~a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of~~
36 ~~the Penal Code.~~

37 ~~(c) “Diagnosed mental disorder” includes a congenital or~~
38 ~~acquired condition affecting the emotional or volitional capacity~~
39 ~~that predisposes the person to the commission of criminal sexual~~

1 acts in a degree constituting the person a menace to the health and
2 safety of others.

3 (d) “Danger to the health and safety of others” does not require
4 proof of a recent overt act while the offender is in custody.

5 (e) “Predatory” means an act is directed toward a stranger, a
6 person of casual acquaintance with whom no substantial
7 relationship exists, or an individual with whom a relationship has
8 been established or promoted for the primary purpose of
9 victimization.

10 (f) “Recent overt act” means any criminal act that manifests a
11 likelihood that the actor may engage in sexually violent predatory
12 criminal behavior.

13 (g) Notwithstanding any other provision of law and for purposes
14 of this section, a prior juvenile adjudication of a sexually violent
15 offense may constitute a prior conviction for which the person
16 received a determinate term if all of the following apply:

17 (1) The juvenile was 16 years of age or older at the time he or
18 she committed the prior offense.

19 (2) The prior offense is a sexually violent offense as specified
20 in subdivision (b).

21 (3) The juvenile was adjudged a ward of the juvenile court
22 within the meaning of Section 602 because of the person’s
23 commission of the offense giving rise to the juvenile court
24 adjudication.

25 (4) The juvenile was committed to the Department of the Youth
26 Authority for the sexually violent offense.

27 (h) A minor adjudged a ward of the court for commission of an
28 offense that is defined as a sexually violent offense shall be entitled
29 to specific treatment as a sexual offender. The failure of a minor
30 to receive that treatment shall not constitute a defense or bar to a
31 determination that any person is a sexually violent predator within
32 the meaning of this article.