

Introduced by Senator RunnerFebruary 22, 2008

An act to amend Section 6601 of the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

SB 1546, as introduced, Runner. 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. The evaluation is to be performed by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the director shall forward a request for a petition for commitment to the applicable county. If the evaluators do not agree as to whether the person meets the criteria for a sexually violent predator, the director is required to arrange for examination by 2 independent professionals who are not employees of the state and who meet specified requirements.

This bill would specify that the psychologists or psychiatrists performing the original evaluation may be independent professionals.

Vote: majority. Appropriation: no. Fiscal committee: 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 all of the
2 following:

3 (a) There is within the State Department of Mental Health the
4 Sex Offender Commitment Program (SOCP). The SOCP exists to
5 implement the provisions of the sexually violent predator civil
6 commitment program (Article 4 (commencing with Section 6600)
7 of Part 2 of Division 6 of the Welfare and Institutions Code).

8 (b) The sexually violent predator civil commitment program
9 requires clinical evaluations of potential sexually violent predators
10 for possible commitment in order to provide treatment, as well as
11 to protect California’s citizens from possible victimization by
12 sexually violent predators.

13 (c) Persons referred to the SOCP by the Department of
14 Corrections and Rehabilitation as possible sexually violent
15 predators and who meet the preliminary screening criteria must
16 undergo precommitment evaluations by at least two professionals
17 that meet the requirements specified in Section 6601 of the Welfare
18 and Institutions Code.

19 (d) It is difficult for the state to recruit and retain individuals
20 with the required expertise within the civil service.

21 (e) Evaluations must be conducted in a timely manner to avoid
22 the release into society of possible sexually violent predators.

23 (f) It is the intent of the Legislature to ensure the protection of
24 California’s residents by providing the State Department of Mental
25 Health with the necessary flexibility in obtaining experienced
26 professionals, both within the civil service and through contracts,
27 so that sexually violent predator evaluations can occur within the
28 statutory timeframe.

29 SEC. 2. Section 6601 of the Welfare and Institutions Code is
30 amended to read:

31 6601. (a) (1) Whenever the Director of Corrections determines
32 that an individual who is in custody under the jurisdiction of the
33 Department of Corrections *and Rehabilitation*, and who is either
34 serving a determinate prison sentence or whose parole has been
35 revoked, may be a sexually violent predator, the director shall, at
36 least six months prior to that individual’s scheduled date for release
37 from prison, refer the person for evaluation in accordance with
38 this section. However, if the inmate was received by the department

1 with less than nine months of his or her sentence to serve, or if the
2 inmate's release date is modified by judicial or administrative
3 action, the director may refer the person for evaluation in
4 accordance with this section at a date that is less than six months
5 prior to the inmate's scheduled release date.

6 (2) A petition may be filed under this section if the individual
7 was in custody pursuant to his or her determinate prison term,
8 parole revocation term, or a hold placed pursuant to Section 6601.3,
9 at the time the petition is filed. A petition shall not be dismissed
10 on the basis of a later judicial or administrative determination that
11 the individual's custody was unlawful, if the unlawful custody was
12 the result of a good faith mistake of fact or law. This paragraph
13 shall apply to any petition filed on or after January 1, 1996.

14 (b) The person shall be screened by the Department of
15 Corrections *and Rehabilitation* and the Board of Prison Terms
16 based on whether the person has committed a sexually violent
17 predatory offense and on a review of the person's social, criminal,
18 and institutional history. This screening shall be conducted in
19 accordance with a structured screening instrument developed and
20 updated by the State Department of Mental Health in consultation
21 with the Department of Corrections *and Rehabilitation*. If as a
22 result of this screening it is determined that the person is likely to
23 be a sexually violent predator, the Department of Corrections *and*
24 *Rehabilitation* shall refer the person to the State Department of
25 Mental Health for a full evaluation of whether the person meets
26 the criteria in Section 6600.

27 (c) The State Department of Mental Health shall evaluate the
28 person in accordance with a standardized assessment protocol,
29 developed and updated by the State Department of Mental Health,
30 to determine whether the person is a sexually violent predator as
31 defined in this article. The standardized assessment protocol shall
32 require assessment of diagnosable mental disorders, as well as
33 various factors known to be associated with the risk of reoffense
34 among sex offenders. Risk factors to be considered shall include
35 criminal and psychosexual history, type, degree, and duration of
36 sexual deviance, and severity of mental disorder.

37 (d) Pursuant to subdivision (c), the person shall be evaluated
38 by two practicing psychiatrists or psychologists, or one practicing
39 psychiatrist and one practicing psychologist, designated by the
40 Director of Mental Health, *one or both of whom may be*

1 *independent professionals as defined in subdivision (g)*. If both
2 evaluators concur that the person has a diagnosed mental disorder
3 so that he or she is likely to engage in acts of sexual violence
4 without appropriate treatment and custody, the Director of Mental
5 Health shall forward a request for a petition for commitment under
6 Section 6602 to the county designated in subdivision (i). Copies
7 of the evaluation reports and any other supporting documents shall
8 be made available to the attorney designated by the county pursuant
9 to subdivision (i) who may file a petition for commitment.

10 (e) If one of the professionals performing the evaluation pursuant
11 to subdivision (d) does not concur that the person meets the criteria
12 specified in subdivision (d), but the other professional concludes
13 that the person meets those criteria, the Director of Mental Health
14 shall arrange for further examination of the person by two
15 independent professionals selected in accordance with subdivision
16 (g).

17 (f) If an examination by independent professionals pursuant to
18 subdivision (e) is conducted, a petition to request commitment
19 under this article shall only be filed if both independent
20 professionals who evaluate the person pursuant to subdivision (e)
21 concur that the person meets the criteria for commitment specified
22 in subdivision (d). The professionals selected to evaluate the person
23 pursuant to subdivision (g) shall inform the person that the purpose
24 of their examination is not treatment but to determine if the person
25 meets certain criteria to be involuntarily committed pursuant to
26 this article. It is not required that the person appreciate or
27 understand that information.

28 (g) Any independent professional who is designated by the
29 Director of Corrections or the Director of Mental Health for
30 purposes of this section shall not be a state government employee,
31 shall have at least five years of experience in the diagnosis and
32 treatment of mental disorders, and shall include psychiatrists and
33 licensed psychologists who have a doctoral degree in psychology.
34 The requirements set forth in this section also shall apply to any
35 professionals appointed by the court to evaluate the person for
36 purposes of any other proceedings under this article.

37 (h) If the State Department of Mental Health determines that
38 the person is a sexually violent predator as defined in this article,
39 the Director of Mental Health shall forward a request for a petition
40 to be filed for commitment under this article to the county

1 designated in subdivision (i). Copies of the evaluation reports and
2 any other supporting documents shall be made available to the
3 attorney designated by the county pursuant to subdivision (i) who
4 may file a petition for commitment in the superior court.

5 (i) If the county's designated counsel concurs with the
6 recommendation, a petition for commitment shall be filed in the
7 superior court of the county in which the person was convicted of
8 the offense for which he or she was committed to the jurisdiction
9 of the Department of Corrections. The petition shall be filed, and
10 the proceedings shall be handled, by either the district attorney or
11 the county counsel of that county. The county board of supervisors
12 shall designate either the district attorney or the county counsel to
13 assume responsibility for proceedings under this article.

14 (j) The time limits set forth in this section shall not apply during
15 the first year that this article is operative.

16 (k) If the person is otherwise subject to parole, a finding or
17 placement made pursuant to this article shall toll the term of parole
18 pursuant to Article 1 (commencing with Section 3000) of Chapter
19 8 of Title 1 of Part 3 of the Penal Code.

20 (l) Pursuant to subdivision (d), the attorney designated by the
21 county pursuant to subdivision (i) shall notify the State Department
22 of Mental Health of its decision regarding the filing of a petition
23 for commitment within 15 days of making that decision.