

ASSEMBLY BILL

No. 1855

Introduced by Assembly Member Torres

February 22, 2012

An act to amend Section 6601 of the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1855, as introduced, Torres. Sexually violent predators: evaluations.

Existing law provides for the civil commitment of criminal offenders who have been determined to be sexually violent predators for treatment in a secure state hospital facility, as specified. Under existing law, persons to be evaluated for civil commitment are evaluated by 2 practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If the evaluators agree, then a petition for civil commitment may be filed. If the evaluators do not agree, but one evaluator thinks that the person is eligible for commitment, then 2 new evaluations by independent professionals, as specified, are arranged and a petition may not be filed unless both evaluators agree that the person meets the criteria.

This bill would require, when the first 2 evaluators disagree, a new evaluation by one independent professional to determine if the person meets the criteria for commitment. If this independent professional determines that the person meets the criteria, the bill would require another evaluation by an independent professional, and would require the second evaluator to concur that the person meets the criteria before a petition may be filed.

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. Section 6601 of the Welfare and Institutions
2 Code, as amended by Section 3 of Chapter 359 of the Statutes of
3 2011, is amended to read:

4 6601. (a) (1) Whenever the Secretary of the Department of
5 Corrections and Rehabilitation determines that an individual who
6 is in custody under the jurisdiction of the Department of
7 Corrections and Rehabilitation, and who is either serving a
8 determinate prison sentence or whose parole has been revoked,
9 may be a sexually violent predator, the secretary shall, at least six
10 months prior to that individual's scheduled date for release from
11 prison, refer the person for evaluation in accordance with this
12 section. However, if the inmate was received by the department
13 with less than nine months of his or her sentence to serve, or if the
14 inmate's release date is modified by judicial or administrative
15 action, the secretary may refer the person for evaluation in
16 accordance with this section at a date that is less than six months
17 prior to the inmate's scheduled release date.

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

26 (b) The person shall be screened by the Department of
27 Corrections and Rehabilitation and the Board of Parole Hearings
28 based on whether the person has committed a sexually violent
29 predatory offense and on a review of the person's social, criminal,
30 and institutional history. This screening shall be conducted in
31 accordance with a structured screening instrument developed and
32 updated by the State Department of Mental Health in consultation
33 with the Department of Corrections and Rehabilitation. If as a
34 result of this screening it is determined that the person is likely to
35 be a sexually violent predator, the Department of Corrections and

1 Rehabilitation shall refer the person to the State Department of
2 Mental Health for a full evaluation of whether the person meets
3 the criteria in Section 6600.

4 (c) The State Department of Mental Health shall evaluate the
5 person in accordance with a standardized assessment protocol,
6 developed and updated by the State Department of Mental Health,
7 to determine whether the person is a sexually violent predator as
8 defined in this article. The standardized assessment protocol shall
9 require assessment of diagnosable mental disorders, as well as
10 various factors known to be associated with the risk of reoffense
11 among sex offenders. Risk factors to be considered shall include
12 criminal and psychosexual history, type, degree, and duration of
13 sexual deviance, and severity of mental disorder.

14 (d) Pursuant to subdivision (c), the person shall be evaluated
15 by two practicing psychiatrists or psychologists, or one practicing
16 psychiatrist and one practicing psychologist, designated by the
17 Director of Mental Health. If both evaluators concur that the person
18 has a diagnosed mental disorder so that he or she is likely to engage
19 in acts of sexual violence without appropriate treatment and
20 custody, the Director of Mental Health shall forward a request for
21 a petition for commitment under Section 6602 to the county
22 designated in subdivision (i). Copies of the evaluation reports and
23 any other supporting documents shall be made available to the
24 attorney designated by the county pursuant to subdivision (i) who
25 may file a petition for commitment.

26 (e) If one of the professionals performing the evaluation pursuant
27 to subdivision (d) does not concur that the person meets the criteria
28 specified in subdivision (d), but the other professional concludes
29 that the person meets those criteria, the Director of Mental Health
30 shall arrange for further examination of the person by *one or two*
31 independent professionals selected in accordance with ~~subdivision~~
32 *subdivisions (f) and (g)*.

33 (f) If an examination by independent professionals pursuant to
34 subdivision (e) is conducted, ~~a one independent professional shall~~
35 *evaluate the person to determine if the person meets the criteria*
36 *for commitment specified in subdivision (d). The Director of Mental*
37 *Health shall arrange for an evaluation by another independent*
38 *professional only if the first independent professional determines*
39 *that the person meets the criteria. A petition to request commitment*
40 *under this article shall only be filed if both independent*

1 professionals who evaluate the person pursuant to subdivision (e)
2 concur that the person meets the criteria for commitment specified
3 in subdivision (d). The professionals selected to evaluate the person
4 pursuant to subdivision (g) shall inform the person that the purpose
5 of their examination is not treatment but to determine if the person
6 meets certain criteria to be involuntarily committed pursuant to
7 this article. It is not required that the person appreciate or
8 understand that information.

9 (g) Any independent professional who is designated by the
10 Secretary of the Department of Corrections and Rehabilitation or
11 the Director of Mental Health for purposes of this section shall not
12 be a state government employee, shall have at least five years of
13 experience in the diagnosis and treatment of mental disorders, and
14 shall include psychiatrists and licensed psychologists who have a
15 doctoral degree in psychology. The requirements ~~set forth in~~ *of*
16 this section also shall apply to any professionals appointed by the
17 court to evaluate the person for purposes of any other proceedings
18 under this article.

19 (h) If the State Department of Mental Health determines that
20 the person is a sexually violent predator as defined in this article,
21 the Director of Mental Health shall forward a request for a petition
22 to be filed for commitment under this article to the county
23 designated in subdivision (i). Copies of the evaluation reports and
24 any other supporting documents shall be made available to the
25 attorney designated by the county pursuant to subdivision (i) who
26 may file a petition for commitment in the superior court.

27 (i) If the county's designated counsel concurs with the
28 recommendation, a petition for commitment shall be filed in the
29 superior court of the county in which the person was convicted of
30 the offense for which he or she was committed to the jurisdiction
31 of the Department of Corrections and Rehabilitation. The petition
32 shall be filed, and the proceedings shall be handled, by either the
33 district attorney or the county counsel of that county. The county
34 board of supervisors shall designate either the district attorney or
35 the county counsel to assume responsibility for proceedings under
36 this article.

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

39 (k) An order issued by a judge pursuant to Section 6601.5,
40 finding that the petition, on its face, supports a finding of probable

1 cause to believe that the individual named in the petition is likely
2 to engage in sexually violent predatory criminal behavior upon his
3 or her release, shall toll that person's parole pursuant to paragraph
4 (4) of subdivision (a) of Section 3000 of the Penal Code, if that
5 individual is determined to be a sexually violent predator.

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

10 (m) This section shall become operative on the date that the
11 director executes a declaration, which shall be provided to the
12 fiscal and policy committees of the Legislature, including the
13 Chairperson of the Joint Legislative Budget Committee, and the
14 Department of Finance, specifying that sufficient qualified state
15 employees have been hired to conduct the evaluations required
16 pursuant to subdivision (d), or January 1, 2013, whichever occurs
17 first.

O