

## Assembly Bill No. 1142

### CHAPTER 323

An act to amend Section 6603 of the Welfare and Institutions Code, relating to sexually violent predators, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 2001. Filed with Secretary of State September 24, 2001.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1142, Runner. Sexually violent predators: evaluators.

Existing law establishes procedures under which a person under the jurisdiction of the Department of Corrections may be referred for evaluation at least 6 months prior to the person's scheduled date for release from prison if the director determines that the person may be a sexually violent predator, as defined. Existing law provides, under certain circumstances, that this person may be required to stand trial and, if found beyond a reasonable doubt to be a sexually violent predator, may be committed to the custody of the State Department of Mental Health for treatment and confinement in a secure facility until his or her diagnosed mental disorder has so changed that he or she is not likely to commit an act of sexual violence.

Existing law provides that if the attorney petitioning for commitment determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of Mental Health to perform updated evaluations. Existing law further provides that if one or more of the original evaluators is no longer available to testify in court proceedings, the attorney petitioning for commitment may request the State Department of Mental Health to perform replacement evaluations.

This bill would provide that if one or more of the original evaluators is unable to testify in court proceedings for the petitioner, the petitioning attorney may request the State Department of Mental Health to perform replacement evaluations. This bill would also define "no longer available to testify for the petitioner in court proceedings," for purposes of the above provision, to mean that the evaluator, for any of specified reasons, is no longer authorized by the Director of Mental Health to perform evaluations regarding sexually violent predators.

Existing law requires that any updated evaluation be provided to the petitioning attorney.

This bill would require that any updated evaluation performed be provided, in addition, to counsel for the person evaluated.

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

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

SECTION 1. (a) It is the intent of the Legislature to do all of the following:

(1) Clarify existing law with respect to the authority of the Director of Mental Health to replace evaluators in sexually violent predator cases.

(2) Prevent courts in sexually violent predator cases from forcing petitioners to use witnesses who have been found unfit or unsuitable by the Director of Mental Health.

(3) Prevent the release of sexually violent predators by ensuring that petitioners in sexually violent predator cases have the ability to present the best available evidence with respect to whether a person meets the criteria for commitment as a sexually violent predator.

(b) It is further the intent of the Legislature that this act apply retroactively to pending sexually violent predator cases as well as prospectively.

SEC. 2. Section 6603 of the Welfare and Institutions Code is amended to read:

6603. (a) A person subject to this article shall be entitled to a trial by jury, to the assistance of counsel, to the right to retain experts or professional persons to perform an examination on his or her behalf, and to have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

(b) The attorney petitioning for commitment under this article shall have the right to demand that the trial be before a jury.

(c) (1) If the attorney petitioning for commitment under this article determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of Mental Health to perform updated evaluations. If one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, the attorney petitioning for commitment under this article may request the State Department of Mental Health to perform replacement evaluations. When a request is made for updated or replacement evaluations, the State Department of Mental Health shall perform the requested evaluations and forward them to the petitioning



attorney and to the counsel for the person subject to this article. However, updated or replacement evaluations shall not be performed except as necessary to update one or more of the original evaluations or to replace the evaluation of an evaluator who is no longer available to testify for the petitioner in court proceedings. These updated or replacement evaluations shall include review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated, either voluntarily or by court order. If an updated or replacement evaluation results in a split opinion as to whether the person subject to this article meets the criteria for commitment, the State Department of Mental Health shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601.

(2) For purposes of this subdivision, “no longer available to testify for the petitioner in court proceedings” means that the evaluator is no longer authorized by the Director of Mental Health to perform evaluations regarding sexually violent predators as a result of any of the following:

(A) The evaluator has failed to adhere to the protocol of the State Department of Mental Health.

(B) The evaluator’s license has been suspended or revoked.

(C) The evaluator is unavailable pursuant to Section 240 of the Evidence Code.

(d) Nothing in this section shall prevent the defense from presenting otherwise relevant and admissible evidence.

(e) If the person subject to this article or the petitioning attorney does not demand a jury trial, the trial shall be before the court without a jury.

(f) A unanimous verdict shall be required in any jury trial.

(g) The court shall notify the State Department of Mental Health of the outcome of the trial by forwarding to the department a copy of the minute order of the court within 72 hours of the decision.

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

In order to revise procedures relating to the evaluation of sexually violent predators to ensure the fairness and effectiveness of those procedures at the earliest possible time, it is necessary that this act take effect immediately.

