

**Introduced by Senator Poochigian**

February 22, 2005

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An act to *amend Section 3000 of the Penal Code, and to amend Sections 6601, 6604, 6604.1, 6605, and 6608 of the Welfare and Institutions Code, relating to mental health.*

LEGISLATIVE COUNSEL'S DIGEST

SB 864, as amended, Poochigian. Sexually violent predators: term of commitment.

Existing law requires the Director of Corrections, prior to the release of a person from custody resulting from conviction for certain crimes of a sexual nature against 2 or more victims, to refer the person to the State Department of Mental Health for evaluation.

Existing law authorizes civil commitment, as a sexually violent predator, to the custody of the State Department of Mental Health for a 2-year term for treatment of the person's diagnosed mental disorder if the person is adjudicated to be likely to engage in sexually violent criminal behavior if discharged.

This bill would, instead, authorize the commitment for ~~an~~ ~~indefinite~~ 7-year term, and would make conforming changes.

*Existing law provides that the commitment shall not toll or otherwise effect the parole of a person subject to parole.*

*This bill would, instead, make completion of the commitment process a condition of parole for inmates subject to that process and would toll the term of parole during the time in which a committed person is detained in a secure facility.*

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 3000 of the Penal Code is amended to*  
2 *read:*

3     3000. (a) (1) The Legislature finds and declares that the  
4 period immediately following incarceration is critical to  
5 successful reintegration of the offender into society and to  
6 positive citizenship. It is in the interest of public safety for the  
7 state to provide for the supervision of and surveillance of  
8 parolees, including the judicious use of revocation actions, and to  
9 provide educational, vocational, family and personal counseling  
10 necessary to assist parolees in the transition between  
11 imprisonment and discharge. A sentence pursuant to Section  
12 1168 or 1170 shall include a period of parole, unless waived, as  
13 provided in this section.

14     (2) The Legislature finds and declares that it is not the intent  
15 of this section to diminish resources allocated to the Department  
16 of Corrections for parole functions for which the department is  
17 responsible. It is also not the intent of this section to diminish the  
18 resources allocated to the Board of Prison Terms to execute its  
19 duties with respect to parole functions for which the board is  
20 responsible.

21     (3) The Legislature finds and declares that diligent effort must  
22 be made to ensure that parolees are held accountable for their  
23 criminal behavior, including, but not limited to, the satisfaction  
24 of restitution fines and orders.

25     (4) Any finding made pursuant to Article 4 (commencing  
26 with Section 6600) of Chapter 2 of Part 2 of Division 6 of the  
27 Welfare and Institutions Code, that a person is a sexually violent  
28 predator shall *toll, but shall not toll, otherwise* discharge, or  
29 ~~otherwise~~ affect that person's period of parole. *Notwithstanding*  
30 *any provision of law to the contrary, for an inmate subject to*  
31 *commitment proceedings as a sexually violent predator, a*  
32 *condition of parole shall be the satisfactory completion of that*  
33 *process. The period of parole shall be tolled during the portion*  
34 *of that commitment in which the person is detained in a secure*  
35 *facility. Upon release from commitment, the person shall be*  
36 *returned to complete any remainder of the term of parole.*

1 (b) Notwithstanding any provision to the contrary in Article 3  
2 (commencing with Section 3040) of this chapter, the following  
3 shall apply:

4 (1) At the expiration of a term of imprisonment of one year  
5 and one day, or a term of imprisonment imposed pursuant to  
6 Section 1170 or at the expiration of a term reduced pursuant to  
7 Section 2931 or 2933, if applicable, the inmate shall be released  
8 on parole for a period not exceeding three years, except that any  
9 inmate sentenced for an offense specified in paragraph (3), (4),  
10 (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5  
11 shall be released on parole for a period not exceeding five years,  
12 unless in either case the parole authority for good cause waives  
13 parole and discharges the inmate from the custody of the  
14 department.

15 (2) In the case of any inmate sentenced under Section 1168,  
16 the period of parole shall not exceed five years in the case of an  
17 inmate imprisoned for any offense other than first or second  
18 degree murder for which the inmate has received a life sentence,  
19 and shall not exceed three years in the case of any other inmate,  
20 unless in either case the parole authority for good cause waives  
21 parole and discharges the inmate from custody of the department.  
22 This subdivision shall also be applicable to inmates who  
23 committed crimes prior to July 1, 1977, to the extent specified in  
24 Section 1170.2.

25 (3) Notwithstanding paragraphs (1) and (2), in the case of any  
26 offense for which the inmate has received a life sentence  
27 pursuant to Section 667.61 or 667.71, the period of parole shall  
28 be five years. Upon the request of the Department of Corrections,  
29 and on the grounds that the paroled inmate may pose a  
30 substantial danger to public safety, the Board of Prison Terms  
31 shall conduct a hearing to determine if the parolee shall be  
32 subject to a single additional five-year period of parole. The  
33 board shall conduct the hearing pursuant to the procedures and  
34 standards governing parole revocation. The request for parole  
35 extension shall be made no less than 180 days prior to the  
36 expiration of the initial five-year period of parole.

37 (4) The parole authority shall consider the request of any  
38 inmate regarding the length of his or her parole and the  
39 conditions thereof.

1 (5) Upon successful completion of parole, or at the end of the  
2 maximum statutory period of parole specified for the inmate  
3 under paragraph (1), (2), or (3), as the case may be, whichever is  
4 earlier, the inmate shall be discharged from custody. The date of  
5 the maximum statutory period of parole under this subdivision  
6 and paragraphs (1), (2), and (3) shall be computed from the date  
7 of initial parole or from the date of extension of parole pursuant  
8 to paragraph (3) and shall be a period chronologically  
9 determined. Time during which parole is suspended because the  
10 prisoner has absconded or has been returned to custody as a  
11 parole violator shall not be credited toward any period of parole  
12 unless the prisoner is found not guilty of the parole violation.  
13 However, in no case, except as provided in Section 3064, may a  
14 prisoner subject to three years on parole be retained under parole  
15 supervision or in custody for a period longer than four years from  
16 the date of his or her initial parole, and, except as provided in  
17 Section 3064, in no case may a prisoner subject to five years on  
18 parole be retained under parole supervision or in custody for a  
19 period longer than seven years from the date of his or her initial  
20 parole or from the date of extension of parole pursuant to  
21 paragraph (3).

22 (6) The Department of Corrections shall meet with each  
23 inmate at least 30 days prior to his or her good time release date  
24 and shall provide, under guidelines specified by the parole  
25 authority, the conditions of parole and the length of parole up to  
26 the maximum period of time provided by law. The inmate has the  
27 right to reconsideration of the length of parole and conditions  
28 thereof by the parole authority. The Department of Corrections or  
29 the Board of Prison Terms may impose as a condition of parole  
30 that a prisoner make payments on the prisoner's outstanding  
31 restitution fines or orders imposed pursuant to subdivision (a) or  
32 (c) of Section 13967 of the Government Code, as operative prior  
33 to September 28, 1994, or subdivision (b) or (f) of Section  
34 1202.4.

35 (7) For purposes of this chapter, the Board of Prison Terms  
36 shall be considered the parole authority.

37 (8) The sole authority to issue warrants for the return to actual  
38 custody of any state prisoner released on parole rests with the  
39 Board of Prison Terms, except for any escaped state prisoner or  
40 any state prisoner released prior to his or her scheduled release

1 date who should be returned to custody, and Section 3060 shall  
2 apply.

3 (9) It is the intent of the Legislature that efforts be made with  
4 respect to persons who are subject to subparagraph (C) of  
5 paragraph (1) of subdivision (a) of Section 290 who are on parole  
6 to engage them in treatment.

7 *SEC. 2. Section 6601 of the Welfare and Institutions Code is*  
8 *amended to read:*

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

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

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

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

3 (c) The State Department of Mental Health shall evaluate the  
4 person in accordance with a standardized assessment protocol,  
5 developed and updated by the State Department of Mental  
6 Health, to determine whether the person is a sexually violent  
7 predator as defined in this article. The standardized assessment  
8 protocol shall require assessment of diagnosable mental  
9 disorders, as well as various factors known to be associated with  
10 the risk of reoffense among sex offenders. Risk factors to be  
11 considered shall include criminal and psychosexual history, type,  
12 degree, and duration of sexual deviance, and severity of mental  
13 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  
18 person has a diagnosed mental disorder so that he or she is likely  
19 to engage in acts of sexual violence without appropriate  
20 treatment and custody, the Director of Mental Health shall  
21 forward a request for a petition for commitment under Section  
22 6602 to the county designated in subdivision (i). Copies of the  
23 evaluation reports and any other supporting documents shall be  
24 made available to the attorney designated by the county pursuant  
25 to subdivision (i) who may file a petition for commitment.

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

33 (f) If an examination by independent professionals pursuant to  
34 subdivision (e) is conducted, a petition to request commitment  
35 under this article shall only be filed if both independent  
36 professionals who evaluate the person pursuant to subdivision (e)  
37 concur that the person meets the criteria for commitment  
38 specified in subdivision (d). The professionals selected to  
39 evaluate the person pursuant to subdivision (g) shall inform the  
40 person that the purpose of their examination is not treatment but

1 to determine if the person meets certain criteria to be  
2 involuntarily committed pursuant to this article. It is not required  
3 that the person appreciate or understand that information.

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

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

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

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

35 (k) If the person is otherwise subject to parole, a finding or  
36 placement made pursuant to this article shall not ~~toll~~, discharge,  
37 or otherwise affect the term of parole pursuant to Article 1  
38 (commencing with Section 3000) of Chapter 8 of Title 1 of Part  
39 3 of the Penal Code, *except that time spent in a secure facility*  
40 *pursuant to a commitment order shall toll the period of probation*

1 *as set forth in paragraph (4) of subdivision (a) of Section 3000 of*  
2 *the Penal Code.*

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

8 SECTION 1. Section 6604 of the Welfare and Institutions  
9 Code is amended to read:

10 6604. The court or jury shall determine whether, beyond a  
11 reasonable doubt, the person is a sexually violent predator. If the  
12 court or jury is not satisfied beyond a reasonable doubt that the  
13 person is a sexually violent predator, the court shall direct that  
14 the person be released at the conclusion of the term for which he  
15 or she was initially sentenced, or that the person be  
16 unconditionally released at the end of parole, whichever is  
17 applicable. If the court or jury determines that the person is a  
18 sexually violent predator, the person shall be committed for ~~an~~  
19 ~~indeterminate term~~ *seven years* to the custody of the State  
20 Department of Mental Health for appropriate treatment and  
21 confinement in a secure facility designated by the Director of  
22 Mental Health, *and the person shall not be kept in actual custody*  
23 *longer than seven years unless a subsequent extended*  
24 *commitment is obtained from the court incident to the filing of a*  
25 *petition for extended commitment under this article or unless the*  
26 *term of commitment changes pursuant to subdivision (e) of*  
27 *Section 6605. Time spent on conditional release shall not count*  
28 *toward the seven-year term of commitment, unless the person is*  
29 *placed in a locked facility by the conditional release program, in*  
30 *which case the time in a locked facility shall count toward the*  
31 *seven-year term of commitment. The facility shall be located on*  
32 *the grounds of an institution under the jurisdiction of the*  
33 *Department of Corrections.*

34 SEC. 2. Section 6604.1 of the Welfare and Institutions Code  
35 is amended to read:

36 6604.1. (a) The ~~indeterminate~~ *seven-year* term of  
37 commitment provided for in Section 6604 shall commence on the  
38 date upon which the court issues the initial order of commitment  
39 pursuant to that section. *The initial seven-year term shall not be*  
40 *reduced by any time spent in a secure facility prior to the order*

1 *of commitment. For any subsequent extended commitments, the*  
2 *term of commitment shall be for seven years commencing from*  
3 *the date of the termination of the previous commitment.*

4 (b) The person shall be evaluated by two practicing  
5 psychologists or psychiatrists, or by one practicing psychologist  
6 and one practicing psychiatrist, designated by the State  
7 Department of Mental Health. The provisions of subdivisions (c)  
8 to (i), inclusive, of Section 6601 shall apply to evaluations  
9 performed for purposes of extended commitments. The rights,  
10 requirements, and procedures set forth in Section 6603 shall  
11 apply to ~~all~~ *extended* commitment proceedings.

12 SEC. 3. Section 6605 of the Welfare and Institutions Code is  
13 amended to read:

14 6605. (a) A person found to be a sexually violent predator  
15 and committed to the custody of the State Department of Mental  
16 Health shall have a current examination of his or her mental  
17 condition made at least once every year. The person may retain,  
18 or if he or she is indigent and so requests, the court may appoint,  
19 a qualified expert or professional person to examine him or her,  
20 and the expert or professional person shall have access to all  
21 records concerning the person.

22 (b) The director shall provide the committed person with an  
23 annual written notice of his or her right to petition the court for  
24 conditional release under Section 6608. The notice shall contain  
25 a waiver of rights. The director shall forward the notice and  
26 waiver form to the court with the annual report. If the person  
27 does not affirmatively waive his or her right to petition the court  
28 for conditional release, the court shall set a show cause hearing to  
29 determine whether facts exist that warrant a hearing on whether  
30 the person's condition has so changed that he or she would not be  
31 a danger to the health and safety of others if discharged. The  
32 committed person shall have the right to be present and to have  
33 an attorney represent him or her at the show cause hearing.

34 (c) If the court at the show cause hearing determines that  
35 probable cause exists to believe that the committed person's  
36 diagnosed mental disorder has so changed that he or she is not a  
37 danger to the health and safety of others and is not likely to  
38 engage in sexually violent criminal behavior if discharged, then  
39 the court shall set a hearing on the issue.

1 (d) At the hearing, the committed person shall have the right to  
2 be present and shall be entitled to the benefit of all constitutional  
3 protections that were afforded to him or her at the initial  
4 commitment proceeding. The attorney designated by the county  
5 pursuant to subdivision (i) of Section 6601 shall represent the  
6 state and shall have the right to demand a jury trial and to have  
7 the committed person evaluated by experts chosen by the state.  
8 The committed person also shall have the right to demand a jury  
9 trial and to have experts evaluate him or her on his or her behalf.  
10 The court shall appoint an expert if the person is indigent and  
11 requests an appointment. The burden of proof at the hearing shall  
12 be on the state to prove beyond a reasonable doubt that the  
13 committed person's diagnosed mental disorder remains such that  
14 he or she is a danger to the health and safety of others and is  
15 likely to engage in sexually violent criminal behavior if  
16 discharged.

17 (e) If the court or jury rules against the committed person at  
18 the hearing conducted pursuant to subdivision (d), the term of  
19 commitment of the person shall run for ~~an indeterminate period~~ a  
20 *period of seven years* from the date of this ruling. If the court or  
21 jury rules for the committed person, he or she shall be  
22 unconditionally released and unconditionally discharged.

23 (f) In the event that the State Department of Mental Health has  
24 reason to believe that a person committed to it as a sexually  
25 violent predator is no longer a sexually violent predator, it shall  
26 seek judicial review of the person's commitment pursuant to the  
27 procedures set forth in Section 7250 in the superior court from  
28 which the commitment was made. If the superior court  
29 determines that the person is no longer a sexually violent  
30 predator, he or she shall be unconditionally released and  
31 unconditionally discharged.

32 SEC. 4. Section 6608 of the Welfare and Institutions Code is  
33 amended to read:

34 6608. (a) Nothing in this article shall prohibit the person who  
35 has been committed as a sexually violent predator from  
36 petitioning the court for conditional release and subsequent  
37 unconditional discharge without the recommendation or  
38 concurrence of the Director of Mental Health. If a person has  
39 previously filed a petition for conditional release without the  
40 concurrence of the director and the court determined, either upon

1 review of the petition or following a hearing, that the petition  
2 was frivolous or that the committed person's condition had not so  
3 changed that he or she would not be a danger to others in that it is  
4 not likely that he or she will engage in sexually violent criminal  
5 behavior if placed under supervision and treatment in the  
6 community, then the court shall deny the subsequent petition  
7 unless it contains facts upon which a court could find that the  
8 condition of the committed person had so changed that a hearing  
9 was warranted. Upon receipt of a first or subsequent petition  
10 from a committed person without the concurrence of the director,  
11 the court shall endeavor whenever possible to review the petition  
12 and determine if it is based upon frivolous grounds and, if so,  
13 shall deny the petition without a hearing. The person petitioning  
14 for conditional release and unconditional discharge under this  
15 subdivision shall be entitled to assistance of counsel.

16 (b) The court shall give notice of the hearing date to the  
17 attorney designated in subdivision (i) of Section 6601, the  
18 retained or appointed attorney for the committed person, and the  
19 Director of Mental Health at least 15 court days before the  
20 hearing date.

21 (c) No hearing upon the petition shall be held until the person  
22 who is committed has been under commitment for confinement  
23 and care in a facility designated by the Director of Mental Health  
24 for not less than one year from the date of the order of  
25 commitment.

26 (d) The court shall hold a hearing to determine whether the  
27 person committed would be a danger to the health and safety of  
28 others in that it is likely that he or she will engage in sexually  
29 violent criminal behavior due to his or her diagnosed mental  
30 disorder if under supervision and treatment in the community. If  
31 the court at the hearing determines that the committed person  
32 would not be a danger to others due to his or her diagnosed  
33 mental disorder while under supervision and treatment in the  
34 community, the court shall order the committed person placed  
35 with an appropriate forensic conditional release program  
36 operated by the state for one year. A substantial portion of the  
37 state-operated forensic conditional release program shall include  
38 outpatient supervision and treatment. The court shall retain  
39 jurisdiction of the person throughout the course of the program.  
40 At the end of one year, the court shall hold a hearing to

1 determine if the person should be unconditionally released from  
2 commitment on the basis that, by reason of a diagnosed mental  
3 disorder, he or she is not a danger to the health and safety of  
4 others in that it is not likely that he or she will engage in sexually  
5 violent criminal behavior. The court shall not make this  
6 determination until the person has completed at least one year in  
7 the state-operated forensic conditional release program. The  
8 court shall notify the Director of Mental Health of the hearing  
9 date.

10 (e) Before placing a committed person in a state-operated  
11 forensic conditional release program, the community program  
12 director designated by the State Department of Mental Health  
13 shall submit a written recommendation to the court stating which  
14 forensic conditional release program is most appropriate for  
15 supervising and treating the committed person. If the court does  
16 not accept the community program director's recommendation,  
17 the court shall specify the reason or reasons for its order on the  
18 record. The procedures described in Sections 1605 to 1610,  
19 inclusive, of the Penal Code shall apply to the person placed in  
20 the forensic conditional release program.

21 (f) If the court determines that the person should be transferred  
22 to a state-operated forensic conditional release program, the  
23 community program director, or his or her designee, shall make  
24 the necessary placement arrangements and, within 21 days after  
25 receiving notice of the court's finding, the person shall be placed  
26 in the community in accordance with the treatment and  
27 supervision plan unless good cause for not doing so is presented  
28 to the court.

29 (g) If the court rules against the committed person at the trial  
30 for unconditional release from commitment, the court may place  
31 the committed person on outpatient status in accordance with the  
32 procedures described in Title 15 (commencing with Section  
33 1600) of Part 2 of the Penal Code.

34 (h) If the court denies the petition to place the person in an  
35 appropriate forensic conditional release program or if the petition  
36 for unconditional discharge is denied, the person may not file a  
37 new application until one year has elapsed from the date of the  
38 denial.

1 (i) In any hearing authorized by this section, the petitioner  
2 shall have the burden of proof by a preponderance of the  
3 evidence.

4 (j) If the petition for conditional release is not made by the  
5 director of the treatment facility to which the person is  
6 committed, no action on the petition shall be taken by the court  
7 without first obtaining the written recommendation of the  
8 director of the treatment facility.

9 *(k) Time spent in a conditional release program pursuant to*  
10 *this section shall not count toward the term of commitment under*  
11 *this article unless the person is confined in a locked facility by*  
12 *the conditional release program, in which case the time spent in*  
13 *a locked facility shall count toward the term of commitment.*