

Senate Bill No. 542

CHAPTER 208

An act to amend Section 6603 of the Welfare and Institutions Code, relating to sexually violent predators.

[Approved by Governor September 11, 2007. Filed with
Secretary of State September 11, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 542, Romero. Sexually violent predators: DNA testing.

Under existing law, any person who was convicted of a felony and is currently serving a term of imprisonment may make a motion for performance of a DNA test.

Under existing law, prior to release from custody of a person who has been convicted of certain crimes of a sexual nature, the person may be referred for a court hearing to determine if the person should be committed to the State Department of Mental Health as a sexually violent predator for treatment in a secure facility.

This bill would require that any right to a DNA test that may exist for a person subject to the sexually violent predator provisions, be in conformity with those provisions applicable to incarcerated persons, and would declare that it does not limit any other legal or equitable right to request DNA testing.

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

SECTION 1. 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. Any right that may exist under this section to request DNA testing on prior cases shall be made in conformity with Section 1405 of the Penal Code.

(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.

(h) Nothing in this section shall limit any legal or equitable right that a person may have to request DNA testing.

SEC. 2. The Legislature does not intend to create any new right to DNA testing on prior cases. It is the intent of the Legislature to provide for a procedure for DNA testing in the event Section 6603 of the Welfare and Institutions Code is construed to provide a right to DNA testing on prior cases.