

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1855**

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**Introduced by Assembly Member Torres**

February 22, 2012

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~~An act to amend Section 6601 of the Welfare and Institutions Code, relating to mental health. An act to amend Section 2810 of the Labor Code, relating to employment.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1855, as amended, Torres. ~~Sexually violent predators: evaluations. Employment: contractors: sufficient funds.~~

*Existing law prohibits a person or entity from entering into a contract or agreement for labor or services with specified types of contractors if the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.*

*This bill, in addition, would make these provisions applicable with regard to warehouse contractors. The bill also would clarify that the contracts or agreements of the specified contractors must include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided, including the payment of the legally required wage rate by classification, as applicable.*

~~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-no*. State-mandated local program: no.

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

1 *SECTION 1. Section 2810 of the Labor Code is amended to*  
2 *read:*

3 2810. (a) A person or entity ~~may~~ *shall* not enter into a contract  
4 or agreement for labor or services with a construction, farm labor,  
5 garment, janitorial, ~~or~~ security guard, *or warehouse* contractor,  
6 where the person or entity knows or should know that the contract  
7 or agreement does not include funds sufficient to allow the  
8 contractor to comply with all applicable local, state, and federal  
9 laws or regulations governing the labor or services to be provided,  
10 *including the payment of the legally required wage rate by*  
11 *classification, as applicable.*

12 (b) There is a rebuttable presumption affecting the burden of  
13 proof that there has been no violation of subdivision (a) where the  
14 contract or agreement with a construction, farm labor, garment,  
15 janitorial, ~~or~~ security guard, *or warehouse* contractor meets all of  
16 the requirements in subdivision (d).

17 (c) Subdivision (a) does not apply to a person or entity who  
18 executes a collective bargaining agreement covering the workers  
19 employed under the contract or agreement, or to a person who  
20 enters into a contract or agreement for labor or services to be

1 performed on his or her home residences, provided that a family  
2 member resides in the residence or residences for which the labor  
3 or services are to be performed for at least a part of the year.

4 (d) To meet the requirements of subdivision (b), a contract or  
5 agreement with a construction, farm labor, garment, janitorial,~~or~~  
6 security guard, *or warehouse* contractor for labor or services must  
7 be in writing, in a single document, *available to an employee upon*  
8 *request*, and contain all of the following provisions, in addition to  
9 any other provisions that may be required by regulations adopted  
10 by the Labor Commissioner from time to time:

11 (1) The name, address, and telephone number of the person or  
12 entity and the construction, farm labor, garment, janitorial,~~or~~  
13 security guard, *or warehouse* contractor through whom the labor  
14 or services are to be provided.

15 (2) A description of the labor or services to be provided and a  
16 statement of when those services are to be commenced and  
17 completed.

18 (3) The employer identification number for state tax purposes  
19 of the construction, farm labor, garment, janitorial,~~or~~ security  
20 guard, *or warehouse* contractor.

21 (4) The workers' compensation insurance policy number and  
22 the name, address, and telephone number of the insurance carrier  
23 of the construction, farm labor, garment, janitorial,~~or~~ security  
24 guard, *or warehouse* contractor.

25 (5) The vehicle identification number of any vehicle that is  
26 owned by the construction, farm labor, garment, janitorial,~~or~~  
27 security guard, *or warehouse* contractor and used for transportation  
28 in connection with any service provided pursuant to the contract  
29 or agreement, the number of the vehicle liability insurance policy  
30 that covers the vehicle, and the name, address, and telephone  
31 number of the insurance carrier.

32 (6) The address of any real property to be used to house workers  
33 in connection with the contract or agreement.

34 (7) The total number of workers to be employed under the  
35 contract or agreement, the total amount of all wages to be paid,  
36 and the date or dates when those wages are to be paid.

37 (8) The amount of the commission or other payment made to  
38 the construction, farm labor, garment, janitorial,~~or~~ security guard,  
39 *or warehouse* contractor for services under the contract or  
40 agreement.

1 (9) The total number of persons who will be utilized under the  
2 contract or agreement as independent contractors, along with a list  
3 of the current local, state, and federal contractor license  
4 identification numbers that the independent contractors are required  
5 to have under local, state, or federal laws or regulations.

6 (10) The signatures of all parties, and the date the contract or  
7 agreement was signed.

8 (e) (1) To qualify for the rebuttable presumption set forth in  
9 subdivision (b), a material change to the terms and conditions of  
10 a contract or agreement between a person or entity and a  
11 construction, farm labor, garment, janitorial, ~~or~~ security guard, *or*  
12 *warehouse* contractor must be in writing, in a single document,  
13 and contain all of the provisions listed in subdivision (d) that are  
14 affected by the change.

15 (2) If a provision required to be contained in a contract or  
16 agreement pursuant to paragraph (7) or (9) of subdivision (d) is  
17 unknown at the time the contract or agreement is executed, the  
18 best estimate available at that time is sufficient to satisfy the  
19 requirements of subdivision (d). If an estimate is used in place of  
20 actual figures in accordance with this paragraph, the parties to the  
21 contract or agreement have a continuing duty to ascertain the  
22 information required pursuant to paragraph (7) or (9) of subdivision  
23 (d) and to reduce that information to writing in accordance with  
24 the requirements of paragraph (1) once that information becomes  
25 known.

26 (f) A person or entity who enters into a contract or agreement  
27 referred to in subdivisions (d) or (e) shall keep a copy of the written  
28 contract or agreement for a period of not less than four years  
29 following the termination of the contract or agreement.

30 (g) (1) An employee aggrieved by a violation of subdivision  
31 (a) may file an action for damages to recover the greater of all of  
32 his or her actual damages or two hundred fifty dollars (\$250) per  
33 employee per violation for an initial violation and one thousand  
34 dollars (\$1,000) per employee for each subsequent violation, and,  
35 upon prevailing in an action brought pursuant to this section, may  
36 recover costs and reasonable attorney's fees. An action under this  
37 section ~~may~~ *shall* not be maintained unless it is pleaded and proved  
38 that an employee was injured as a result of a violation of a labor  
39 law or regulation in connection with the performance of the  
40 contract or agreement.

1 (2) An employee aggrieved by a violation of subdivision (a)  
2 may also bring an action for injunctive relief and, upon prevailing,  
3 may recover costs and reasonable attorney’s fees.

4 (h) The phrase “construction, farm labor, garment, janitorial,  
5 ~~or~~ security guard, *or warehouse* contractor” includes any person,  
6 as defined in this code, whether or not licensed, who is acting in  
7 the capacity of a construction, farm labor, garment, janitorial, ~~or~~  
8 security guard, *or warehouse* contractor.

9 (i) (1) The term “knows” includes the knowledge, arising from  
10 familiarity with the normal facts and circumstances of the business  
11 activity engaged in, that the contract or agreement does not include  
12 funds sufficient to allow the contractor to comply with applicable  
13 laws.

14 (2) The phrase “should know” includes the knowledge of any  
15 additional facts or information that would make a reasonably  
16 prudent person undertake to inquire whether, taken together, the  
17 contract or agreement contains sufficient funds to allow the  
18 contractor to comply with applicable laws.

19 (3) A failure by a person or entity to request or obtain any  
20 information from the contractor that is required by any applicable  
21 statute or by the contract or agreement between them, constitutes  
22 knowledge of that information for purposes of this section.

23 ~~SECTION 1. Section 6601 of the Welfare and Institutions~~  
24 ~~Code, as amended by Section 3 of Chapter 359 of the Statutes of~~  
25 ~~2011, is amended to read:~~

26 ~~6601. (a) (1) Whenever the Secretary of the Department of~~  
27 ~~Corrections and Rehabilitation determines that an individual who~~  
28 ~~is in custody under the jurisdiction of the Department of~~  
29 ~~Corrections and Rehabilitation, and who is either serving a~~  
30 ~~determinate prison sentence or whose parole has been revoked,~~  
31 ~~may be a sexually violent predator, the secretary shall, at least six~~  
32 ~~months prior to that individual’s scheduled date for release from~~  
33 ~~prison, refer the person for evaluation in accordance with this~~  
34 ~~section. However, if the inmate was received by the department~~  
35 ~~with less than nine months of his or her sentence to serve, or if the~~  
36 ~~inmate’s release date is modified by judicial or administrative~~  
37 ~~action, the secretary may refer the person for evaluation in~~  
38 ~~accordance with this section at a date that is less than six months~~  
39 ~~prior to the inmate’s scheduled release date.~~

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

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

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

32     ~~(d) Pursuant to subdivision (c), the person shall be evaluated~~  
33 ~~by two practicing psychiatrists or psychologists, or one practicing~~  
34 ~~psychiatrist and one practicing psychologist, designated by the~~  
35 ~~Director of Mental Health. If both evaluators concur that the person~~  
36 ~~has a diagnosed mental disorder so that he or she is likely to engage~~  
37 ~~in acts of sexual violence without appropriate treatment and~~  
38 ~~custody, the Director of Mental Health shall forward a request for~~  
39 ~~a petition for commitment under Section 6602 to the county~~  
40 ~~designated in subdivision (i). Copies of the evaluation reports and~~

1 any other supporting documents shall be made available to the  
2 attorney designated by the county pursuant to subdivision (i) who  
3 may file a petition for commitment.

4 (e) If one of the professionals performing the evaluation pursuant  
5 to subdivision (d) does not concur that the person meets the criteria  
6 specified in subdivision (d), but the other professional concludes  
7 that the person meets those criteria, the Director of Mental Health  
8 shall arrange for further examination of the person by one or two  
9 independent professionals selected in accordance with subdivisions  
10 (f) and (g).

11 (f) If an examination by independent professionals pursuant to  
12 subdivision (e) is conducted, one independent professional shall  
13 evaluate the person to determine if the person meets the criteria  
14 for commitment specified in subdivision (d). The Director of  
15 Mental Health shall arrange for an evaluation by another  
16 independent professional only if the first independent professional  
17 determines that the person meets the criteria. A petition to request  
18 commitment under this article shall only be filed if both  
19 independent professionals who evaluate the person pursuant to  
20 subdivision (e) concur that the person meets the criteria for  
21 commitment specified in subdivision (d). The professionals selected  
22 to evaluate the person pursuant to subdivision (g) shall inform the  
23 person that the purpose of their examination is not treatment but  
24 to determine if the person meets certain criteria to be involuntarily  
25 committed pursuant to this article. It is not required that the person  
26 appreciate or understand that information.

27 (g) Any independent professional who is designated by the  
28 Secretary of the Department of Corrections and Rehabilitation or  
29 the Director of Mental Health for purposes of this section shall not  
30 be a state government employee, shall have at least five years of  
31 experience in the diagnosis and treatment of mental disorders, and  
32 shall include psychiatrists and licensed psychologists who have a  
33 doctoral degree in psychology. The requirements of this section  
34 also shall apply to any professionals appointed by the court to  
35 evaluate the person for purposes of any other proceedings under  
36 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 and Rehabilitation. The petition~~  
10 ~~shall be filed, and the proceedings shall be handled, by either the~~  
11 ~~district attorney or the county counsel of that county. The county~~  
12 ~~board of supervisors shall designate either the district attorney or~~  
13 ~~the county counsel to assume responsibility for proceedings under~~  
14 ~~this article.~~

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

17 (k) ~~An order issued by a judge pursuant to Section 6601.5,~~  
18 ~~finding that the petition, on its face, supports a finding of probable~~  
19 ~~cause to believe that the individual named in the petition is likely~~  
20 ~~to engage in sexually violent predatory criminal behavior upon his~~  
21 ~~or her release, shall toll that person's parole pursuant to paragraph~~  
22 ~~(4) of subdivision (a) of Section 3000 of the Penal Code, if that~~  
23 ~~individual is determined to be a sexually violent predator.~~

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

28 (m) ~~This section shall become operative on the date that the~~  
29 ~~director executes a declaration, which shall be provided to the~~  
30 ~~fiscal and policy committees of the Legislature, including the~~  
31 ~~Chairperson of the Joint Legislative Budget Committee, and the~~  
32 ~~Department of Finance, specifying that sufficient qualified state~~  
33 ~~employees have been hired to conduct the evaluations required~~  
34 ~~pursuant to subdivision (d), or January 1, 2013, whichever occurs~~  
35 ~~first.~~

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