

AMENDED IN ASSEMBLY JUNE 28, 2012
AMENDED IN ASSEMBLY JUNE 18, 2012
AMENDED IN ASSEMBLY SEPTEMBER 2, 2011
AMENDED IN ASSEMBLY JUNE 28, 2011
AMENDED IN SENATE MAY 25, 2011
AMENDED IN SENATE MAY 9, 2011
AMENDED IN SENATE APRIL 14, 2011
AMENDED IN SENATE MARCH 25, 2011

SENATE BILL

No. 760

Introduced by Senator *Senators Alquist and Pavley*
(Coauthor: Assembly Member Galgiani)

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 760, as amended, Alquist. 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.

Existing law specifies the judicial processes necessary for civil commitment as a sexually violent predator, including, but not limited to, the right by the attorney petitioning for commitment to demand a jury trial and 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, existing law authorizes this attorney to request the State Department of Mental Health to perform replacement evaluations. Existing law defines when an evaluator is no longer available to testify for this purpose.

This bill would include, *with a specified exception*, an evaluator who has resigned or retired within the definition of an evaluator who is no longer available to testify.

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

Vote: $\frac{2}{3}$. 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 6603 of the Welfare and Institutions Code
2 is amended to read:

3 6603. (a) A person subject to this article shall be entitled to a
4 trial by jury, to the assistance of counsel, to the right to retain
5 experts or professional persons to perform an examination on his
6 or her behalf, and to have access to all relevant medical and
7 psychological records and reports. In the case of a person who is
8 indigent, the court shall appoint counsel to assist him or her, and,
9 upon the person’s request, assist the person in obtaining an expert
10 or professional person to perform an examination or participate in
11 the trial on the person’s behalf. Any right that may exist under this
12 section to request DNA testing on prior cases shall be made in
13 conformity with Section 1405 of the Penal Code.

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

16 (c) (1) If the attorney petitioning for commitment under this
17 article determines that updated evaluations are necessary in order
18 to properly present the case for commitment, the attorney may
19 request the State Department of ~~Mental Health~~ *State Hospitals* to

1 perform updated evaluations. If one or more of the original
2 evaluators is no longer available to testify for the petitioner in court
3 proceedings, the attorney petitioning for commitment under this
4 article may request the State Department of ~~Mental Health~~ *State*
5 *Hospitals* to perform replacement evaluations. When a request is
6 made for updated or replacement evaluations, the State Department
7 of ~~Mental Health~~ *State Hospitals* shall perform the requested
8 evaluations and forward them to the petitioning attorney and to
9 the counsel for the person subject to this article. However, updated
10 or replacement evaluations shall not be performed except as
11 necessary to update one or more of the original evaluations or to
12 replace the evaluation of an evaluator who is no longer available
13 to testify for the petitioner in court proceedings. These updated or
14 replacement evaluations shall include review of available medical
15 and psychological records, including treatment records,
16 consultation with current treating clinicians, and interviews of the
17 person being evaluated, either voluntarily or by court order. If an
18 updated or replacement evaluation results in a split opinion as to
19 whether the person subject to this article meets the criteria for
20 commitment, the State Department of ~~Mental Health~~ *State*
21 *Hospitals* shall conduct two additional evaluations in accordance
22 with subdivision (f) of Section 6601.

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

28 (A) The evaluator has failed to adhere to the protocol of the
29 State Department of ~~Mental Health~~ *State Hospitals*.

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

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

33 (D) The evaluator has resigned or retired, *unless this evaluator,*
34 *in his or her most recent evaluation of the person subject to this*
35 *article, opined that the person subject to this article does not meet*
36 *the criteria for commitment.*

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

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

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

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

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

11 (i) *Nothing in subparagraph (D) of paragraph (2) of subdivision*
12 *(c) shall be construed to affect the authority of the State*
13 *Department of State Hospitals to conduct two additional*
14 *evaluations when an updated or replacement evaluation results*
15 *in a split opinion.*

16 SEC. 2. This act is an urgency statute necessary for the
17 immediate preservation of the public peace, health, or safety within
18 the meaning of Article IV of the Constitution and shall go into
19 immediate effect. The facts constituting the necessity are:

20 In order to protect communities from a public safety threat, it is
21 necessary that this act take effect immediately.