

Introduced by Senator Nielsen

February 22, 2013

An act to amend Section 2962 of the Penal Code, and to amend Section 6601 of the Welfare and Institutions Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

SB 709, as introduced, Nielsen. Inmates: mental evaluations.

Existing law requires that as a condition of parole, a prisoner who has a severe mental disorder, as defined, shall be required to be treated by the State Department of State Hospitals, and the State Department of State Hospitals shall provide the necessary treatment. Existing law requires that, prior to release on parole, the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of State Hospitals have evaluated the prisoner at a facility of the Department of Corrections and Rehabilitation.

This bill would require the evaluation to be a face-to-face evaluation.

Existing law requires that whenever the Secretary of the Department of Corrections and Rehabilitation determines that an individual who is in custody under the jurisdiction of the department, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the secretary shall, at least 6 months prior to that individual's scheduled date for release from prison, refer the person for evaluation to the State Department of State Hospitals. Existing law requires the State Department of State Hospitals to evaluate the person in accordance with a standardized assessment protocol, developed and updated by that department, to determine whether the person is a sexually violent predator.

This bill would require the evaluation to be a face-to-face evaluation. The bill would make additional technical changes.

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 2962 of the Penal Code is amended to
2 read:

3 2962. As a condition of parole, a prisoner who meets the
4 following criteria shall be required to be treated by the State
5 Department of State Hospitals, and the State Department of State
6 Hospitals shall provide the necessary treatment:

7 (a) (1) The prisoner has a severe mental disorder that is not in
8 remission or cannot be kept in remission without treatment.

9 (2) The term “severe mental disorder” means an illness or
10 disease or condition that substantially impairs the person’s thought,
11 perception of reality, emotional process, or judgment; or which
12 grossly impairs behavior; or that demonstrates evidence of an acute
13 brain syndrome for which prompt remission, in the absence of
14 treatment, is unlikely. The term “severe mental disorder” as used
15 in this section does not include a personality or adjustment disorder,
16 epilepsy, mental retardation or other developmental disabilities,
17 or addiction to or abuse of intoxicating substances.

18 (3) The term “remission” means a finding that the overt signs
19 and symptoms of the severe mental disorder are controlled either
20 by psychotropic medication or psychosocial support. A person
21 “cannot be kept in remission without treatment” if during the year
22 prior to the question being before the Board of Parole Hearings or
23 a trial court, he or she has been in remission and he or she has been
24 physically violent, except in self-defense, or he or she has made
25 a serious threat of substantial physical harm upon the person of
26 another so as to cause the target of the threat to reasonably fear
27 for his or her safety or the safety of his or her immediate family,
28 or he or she has intentionally caused property damage, or he or
29 she has not voluntarily followed the treatment plan. In determining
30 if a person has voluntarily followed the treatment plan, the standard
31 shall be whether the person has acted as a reasonable person would
32 in following the treatment plan.

33 (b) The severe mental disorder was one of the causes of or was
34 an aggravating factor in the commission of a crime for which the
35 prisoner was sentenced to prison.

(c) The prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release.

(d) (1) Prior to release on parole, the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of State Hospitals have evaluated the prisoner *in a face-to-face evaluation* at a facility of the Department of Corrections and Rehabilitation, and a chief psychiatrist of the Department of Corrections and Rehabilitation has certified to the Board of Parole Hearings that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior, that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to his or her parole release day, and that by reason of his or her severe mental disorder the prisoner represents a substantial danger of physical harm to others. For prisoners being treated by the State Department of State Hospitals pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections and Rehabilitation, and the evaluation shall be done at a state hospital by the person at the state hospital in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections and Rehabilitation.

(2) If the professionals doing the evaluation pursuant to paragraph (1) do not concur that (A) the prisoner has a severe mental disorder, (B) that the disorder is not in remission or cannot be kept in remission without treatment, or (C) that the severe mental disorder was a cause of, or aggravated, the prisoner's criminal behavior, and a chief psychiatrist has certified the prisoner to the Board of Parole Hearings pursuant to this paragraph, then the Board of Parole Hearings shall order a further examination by two independent professionals, as provided for in Section 2978.

(3) If at least one of the independent professionals who evaluate the prisoner pursuant to paragraph (2) concurs with the chief psychiatrist's certification of the issues described in paragraph (2), this subdivision shall be applicable to the prisoner. The professionals appointed pursuant to Section 2978 shall inform the prisoner that the purpose of their examination is not treatment but to determine if the prisoner meets certain criteria to be involuntarily

1 treated as a mentally disordered offender. It is not required that
2 the prisoner appreciate or understand that information.

3 (e) The crime referred to in subdivision (b) meets both of the
4 following criteria:

5 (1) The defendant received a determinate sentence pursuant to
6 Section 1170 for the crime.

7 (2) The crime is one of the following:

8 (A) Voluntary manslaughter.

9 (B) Mayhem.

10 (C) Kidnapping in violation of Section 207.

11 (D) Any robbery wherein it was charged and proved that the
12 defendant personally used a deadly or dangerous weapon, as
13 provided in subdivision (b) of Section 12022, in the commission
14 of that robbery.

15 (E) Carjacking, as defined in subdivision (a) of Section 215, if
16 it is charged and proved that the defendant personally used a deadly
17 or dangerous weapon, as provided in subdivision (b) of Section
18 12022, in the commission of the carjacking.

19 (F) Rape, as defined in paragraph (2) or (6) of subdivision (a)
20 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
21 262.

22 (G) Sodomy by force, violence, duress, menace, or fear of
23 immediate and unlawful bodily injury on the victim or another
24 person.

25 (H) Oral copulation by force, violence, duress, menace, or fear
26 of immediate and unlawful bodily injury on the victim or another
27 person.

28 (I) Lewd acts on a child under the age of 14 years in violation
29 of Section 288.

30 (J) Continuous sexual abuse in violation of Section 288.5.

31 (K) The offense described in subdivision (a) of Section 289
32 where the act was accomplished against the victim's will by force,
33 violence, duress, menace, or fear of immediate and unlawful bodily
34 injury on the victim or another person.

35 (L) Arson in violation of subdivision (a) of Section 451, or arson
36 in violation of any other provision of Section 451 or in violation
37 of Section 455 where the act posed a substantial danger of physical
38 harm to others.

1 (M) Any felony in which the defendant used a firearm which
2 use was charged and proved as provided in Section 12022.5,
3 12022.53, or 12022.55.

4 (N) A violation of Section 18745.

5 (O) Attempted murder.

6 (P) A crime not enumerated in subparagraphs (A) to (O),
7 inclusive, in which the prisoner used force or violence, or caused
8 serious bodily injury as defined in paragraph (4) of subdivision (f)
9 of Section 243.

10 (Q) A crime in which the perpetrator expressly or impliedly
11 threatened another with the use of force or violence likely to
12 produce substantial physical harm in such a manner that a
13 reasonable person would believe and expect that the force or
14 violence would be used. For purposes of this subparagraph,
15 substantial physical harm shall not require proof that the threatened
16 act was likely to cause great or serious bodily injury.

17 (f) As used in this chapter, “substantial danger of physical harm”
18 does not require proof of a recent overt act.

19 SEC. 2. Section 6601 of the Welfare and Institutions Code is
20 amended to read:

21 6601. (a) (1) Whenever the Secretary of the Department of
22 Corrections and Rehabilitation determines that an individual who
23 is in custody under the jurisdiction of the Department of
24 Corrections and Rehabilitation, and who is either serving a
25 determinate prison sentence or whose parole has been revoked,
26 may be a sexually violent predator, the secretary shall, at least six
27 months prior to that individual’s scheduled date for release from
28 prison, refer the person for evaluation in accordance with this
29 section. However, if the inmate was received by the department
30 with less than nine months of his or her sentence to serve, or if the
31 inmate’s release date is modified by judicial or administrative
32 action, the secretary may refer the person for evaluation in
33 accordance with this section at a date that is less than six months
34 prior to the inmate’s scheduled release date.

35 (2) A petition may be filed under this section if the individual
36 was in custody pursuant to his or her determinate prison term,
37 parole revocation term, or a hold placed pursuant to Section 6601.3,
38 at the time the petition is filed. A petition shall not be dismissed
39 on the basis of a later judicial or administrative determination that
40 the individual’s custody was unlawful, if the unlawful custody was

1 the result of a good faith mistake of fact or law. This paragraph
2 shall apply to any petition filed on or after January 1, 1996.

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

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

27 (d) Pursuant to subdivision (c), the person shall be evaluated *in*
28 *a face-to-face evaluation* by two practicing psychiatrists or
29 psychologists, or one practicing psychiatrist and one practicing
30 psychologist, designated by the Director of Mental Health. If both
31 evaluators concur that the person has a diagnosed mental disorder
32 so that he or she is likely to engage in acts of sexual violence
33 without appropriate treatment and custody, the Director of Mental
34 Health shall forward a request for a petition for commitment under
35 Section 6602 to the county designated in subdivision (i). Copies
36 of the evaluation reports and any other supporting documents shall
37 be made available to the attorney designated by the county pursuant
38 to subdivision (i) who may file a petition for commitment.

39 (e) If one of the professionals performing the evaluation pursuant
40 to subdivision (d) does not concur that the person meets the criteria

specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

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

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

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and Rehabilitation. The petition shall be filed, and the proceedings shall be handled, by either the

1 district attorney or the county counsel of that county. The county
2 board of supervisors shall designate either the district attorney or
3 the county counsel to assume responsibility for proceedings under
4 this article.

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

7 (k) An order issued by a judge pursuant to Section 6601.5,
8 finding that the petition, on its face, supports a finding of probable
9 cause to believe that the individual named in the petition is likely
10 to engage in sexually violent predatory criminal behavior upon his
11 or her release, shall toll that person's parole pursuant to paragraph
12 (4) of subdivision (a) of Section 3000 of the Penal Code, if that
13 individual is determined to be a sexually violent predator.

14 (l) Pursuant to subdivision (d), the attorney designated by the
15 county pursuant to subdivision (i) shall notify the State Department
16 of ~~Mental Health~~ *State Hospitals* of its decision regarding the filing
17 of a petition for commitment within 15 days of making that
18 decision.

19 (m) This section shall become operative on the date that the
20 director executes a declaration, which shall be provided to the
21 fiscal and policy committees of the Legislature, including the
22 Chairperson of the Joint Legislative Budget Committee, and the
23 Department of Finance, specifying that sufficient qualified state
24 employees have been hired to conduct the evaluations required
25 pursuant to subdivision (d), or January 1, 2013, whichever occurs
26 first.