

AMENDED IN ASSEMBLY APRIL 22, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 1003**

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**Introduced by Assembly Member Nazarian**

February 26, 2015

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An act to amend ~~Section 6604.9 of~~ *Sections 6601 and 6604.9 of, and to add Section 6610 to,* the Welfare and Institutions Code, relating to mental health.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1003, as amended, Nazarian. Mental health: ~~Sexually~~ *sexually* violent predators.

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. Existing law requires the Secretary of the Department of Corrections and Rehabilitation to refer a prisoner for evaluation by the State Department of State Hospitals when the secretary determines that the person may be a sexually violent predator, *requires the State Department of State Hospitals to evaluate the person in accordance with a standardized assessment protocol, as specified, to determine whether the person is a sexually violent predator,* and specifies the judicial processes necessary for civil commitment as a sexually violent predator, including, but not limited to, the right to a jury trial. ~~Existing~~

*This bill would require the State Department of State Hospitals to consult, on or before January 30, 2016, with a committee comprised of representatives of specified organizations to make recommendations*

*regarding possible changes to the standardized assessment protocol. The bill would require the State Department of State Hospitals, on or before March 1, 2016, to initiate the regulatory process to update the standardized assessment protocol, as specified.*

*Existing law requires an annual examination of the mental condition of a sexually violent predator to determine whether conditional release to a less restrictive alternative or unconditional release is in the best interest of the person and the conditions imposed would adequately protect the community. Existing law requires that the report be in the form of a declaration and prepared by a professionally qualified person. Proposition 83, enacted by the voters at the November 7, 2006, statewide general election, made various changes to the sexually violent predator civil commitment process.*

*Proposition 83 permits the Legislature to amend its provisions, either by a  $\frac{2}{3}$  vote of the membership of each house, or by a majority vote of the membership of each house if the amendments expand the scope of the application of the provisions of the proposition or increase the punishments or penalties provided in the proposition.*

*This bill would require the report described above to be signed by the Director of the State Department of State Hospitals. By amending the requirements for the report, this bill would amend Proposition 83.*

*The bill would also create a 7-member oversight board to advise the Governor and the Legislature regarding the civil commitment of sexually violent predators comprised of representatives selected by the State Department of State Hospitals and other organizations, as specified. The bill would require the oversight board to meet at least 6 times per year and, beginning January 1, 2017, to make an annual report to the Governor and the Legislature including the board's recommendations, as specified.*

*Vote:  $\frac{2}{3}$ -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 6601 of the Welfare and Institutions Code
- 2     is amended to read:
- 3     6601. (a) (1) Whenever the Secretary of the Department of
- 4     Corrections and Rehabilitation determines that an individual who
- 5     is in custody under the jurisdiction of the Department of
- 6     Corrections and Rehabilitation, and who is either serving a

1 determinate prison sentence or whose parole has been revoked,  
2 may be a sexually violent predator, the secretary shall, at least six  
3 months prior to that individual's scheduled date for release from  
4 prison, refer the person for evaluation in accordance with this  
5 section. However, if the inmate was received by the department  
6 with less than nine months of his or her sentence to serve, or if the  
7 inmate's release date is modified by judicial or administrative  
8 action, the secretary may refer the person for evaluation in  
9 accordance with this section at a date that is less than six months  
10 prior to the inmate's scheduled release date.

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

19 (b) The person shall be screened by the Department of  
20 Corrections and Rehabilitation and the Board of Parole Hearings  
21 based on whether the person has committed a sexually violent  
22 predatory offense and on a review of the person's social, criminal,  
23 and institutional history. This screening shall be conducted in  
24 accordance with a structured screening instrument developed and  
25 updated by the State Department of State Hospitals in consultation  
26 with the Department of Corrections and Rehabilitation. If as a  
27 result of this screening it is determined that the person is likely to  
28 be a sexually violent predator, the Department of Corrections and  
29 Rehabilitation shall refer the person to the State Department of  
30 State Hospitals for a full evaluation of whether the person meets  
31 the criteria in Section 6600.

32 (c) (1) The State Department of State Hospitals shall evaluate  
33 the person in accordance with a standardized assessment protocol,  
34 developed and updated by the State Department of State Hospitals,  
35 to determine whether the person is a sexually violent predator as  
36 defined in this article. The standardized assessment protocol shall  
37 require assessment of diagnosable mental disorders, as well as  
38 various factors known to be associated with the risk of reoffense  
39 among sex offenders. Risk factors to be considered shall include

1 criminal and psychosexual history, type, degree, and duration of  
2 sexual deviance, and severity of mental disorder.

3 (2) *On or before January 30, 2016, the State Department of*  
4 *State Hospitals shall consult with a committee consisting of one*  
5 *representative from each of the State Department of State*  
6 *Hospitals, the California District Attorneys Association, the*  
7 *California Public Defenders Association, and the Los Angeles*  
8 *District Attorney's Office. The committee members shall select a*  
9 *member of the private defense bar and a person with experience*  
10 *as an evaluator under Article 4 (commencing with Section 6600)*  
11 *of Chapter 2 of Part 2 of Division 6 to make recommendations*  
12 *regarding possible changes to the standardized assessment*  
13 *protocol, as described in paragraph (3).*

14 (3) *On or before March 1, 2016, the State Department of State*  
15 *Hospitals shall initiate the regulatory process to update the*  
16 *standardized assessment protocol, including a plan for formal*  
17 *supervisory review of evaluations and a checklist for reviewing*  
18 *evaluations, as recommended by the March 2015 report of the*  
19 *California State Auditor. The regulations shall also include*  
20 *requirements and procedures for training evaluators.*

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

33 (e) If one of the professionals performing the evaluation pursuant  
34 to subdivision (d) does not concur that the person meets the criteria  
35 specified in subdivision (d), but the other professional concludes  
36 that the person meets those criteria, the Director of State Hospitals  
37 shall arrange for further examination of the person by two  
38 independent professionals selected in accordance with subdivision  
39 (g).

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

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

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

30 (i) If the county's designated counsel concurs with the  
31 recommendation, a petition for commitment shall be filed in the  
32 superior court of the county in which the person was convicted of  
33 the offense for which he or she was committed to the jurisdiction  
34 of the Department of Corrections and Rehabilitation. The petition  
35 shall be filed, and the proceedings shall be handled, by either the  
36 district attorney or the county counsel of that county. The county  
37 board of supervisors shall designate either the district attorney or  
38 the county counsel to assume responsibility for proceedings under  
39 this article.

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

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

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

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

#### **SECTION 1.**

*SEC. 2.* Section 6604.9 of the Welfare and Institutions Code is amended to read:

6604.9. (a) A person found to be a sexually violent predator and committed to the custody of the State Department of State Hospitals shall have a current examination of his or her mental condition made at least once every year. The report shall be in the form of a declaration and shall be prepared by a professionally qualified person. The report shall also be signed by the Director of the State Department of State Hospitals. The person may retain or, if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

(b) The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative, pursuant to Section 6608, or an unconditional discharge, pursuant to Section 6605, is in the best interest of the

1 person and conditions can be imposed that would adequately  
2 protect the community.

3 (c) The State Department of State Hospitals shall file this  
4 periodic report with the court that committed the person under this  
5 article. A copy of the report shall be served on the prosecuting  
6 agency involved in the initial commitment and upon the committed  
7 person.

8 (d) If the State Department of State Hospitals determines that  
9 either: (1) the person's condition has so changed that the person  
10 no longer meets the definition of a sexually violent predator and  
11 should, therefore, be considered for unconditional discharge, or  
12 (2) conditional release to a less restrictive alternative is in the best  
13 interest of the person and conditions can be imposed that  
14 adequately protect the community, the director shall authorize the  
15 person to petition the court for conditional release to a less  
16 restrictive alternative or for an unconditional discharge. The  
17 petition shall be filed with the court and served upon the  
18 prosecuting agency responsible for the initial commitment.

19 (e) The court, upon receipt of the petition for conditional release  
20 to a less restrictive alternative, shall consider the petition using  
21 procedures described in Section 6608.

22 (f) The court, upon receiving a petition for unconditional  
23 discharge, shall order a show cause hearing, pursuant to the  
24 provisions of Section 6605, at which the court may consider the  
25 petition and any accompanying documentation provided by the  
26 medical director, the prosecuting attorney, or the committed person.

27 *SEC. 3. Section 6610 is added to the Welfare and Institutions*  
28 *Code, to read:*

29 *6610. (a) (1) There is hereby created an oversight board that*  
30 *shall advise the Legislature and the Governor regarding sexually*  
31 *violent predators under Article 4 (commencing with Section 6600)*  
32 *of Chapter 2 of Part 2 of Division 6.*

33 *(2) The board shall be comprised of seven members. Each of*  
34 *the following organizations shall select one representative to serve*  
35 *on the oversight board: The State Department of State Hospitals,*  
36 *the California District Attorneys Association, the California Public*  
37 *Defenders Association, the Los Angeles District Attorney's Office,*  
38 *and the California Judicial Commission on Judicial Performance.*

39 *(3) The board members selected pursuant to paragraph (2) shall*  
40 *select both a representative of the private defense bar and a person*

1 *with experience as an evaluator under Article 4 (commencing with*  
2 *Section 6600) of Chapter 2 of Part 2 of Division 6 to serve on the*  
3 *oversight board.*

4 *(b) (1) The oversight board shall meet at least six times per*  
5 *year.*

6 *(2) On or before January 1, 2017, and on or before January 1*  
7 *in each subsequent year, the oversight board shall make a report*  
8 *to the Governor and the Legislature making recommendations*  
9 *relating to implementation of Article 4 (commencing with Section*  
10 *6600) of Chapter 2 of Part 2 of Division 6, including, but not*  
11 *limited to, evaluating sexually violent predators in state hospitals.*

12 *(3) The report required pursuant to paragraph (2) shall be*  
13 *submitted to the Legislature in compliance with subdivision (c) of*  
14 *Section 9795 of the Government Code.*