

**Introduced by Senator Pavley**February 26, 2015

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

## LEGISLATIVE COUNSEL'S DIGEST

SB 507, as introduced, Pavley. 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. Under existing law, persons to be evaluated for civil commitment are evaluated by 2 practicing psychiatrists or psychologists designated by the Director of State Hospitals. If both evaluators concur that the person is likely to engage in acts of sexual violence without appropriate treatment and custody, the director is required to forward a request for a petition for commitment to the district attorney or county counsel, who may then file the petition with the court.

Under existing law, 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 may request the department to perform replacement evaluations. These replacement evaluations include the review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated. Existing law requires that the department forward the replacement evaluations to the petitioning attorney and to the counsel for the person who is the subject of the commitment hearing.

This bill would provide that the attorneys in the civil commitment proceeding have the same access to medical and psychological records

as the evaluators performing a replacement evaluation, and would direct the court to issue a subpoena or court order for those records upon request. The bill would authorize the attorneys to use the records in the commitment proceeding, but would prohibit disclosure of the records for any other purpose.

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 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 State Hospitals to perform updated  
20 evaluations. If one or more of the original evaluators is no longer  
21 available to testify for the petitioner in court proceedings, the  
22 attorney petitioning for commitment under this article may request  
23 the State Department of State Hospitals to perform replacement  
24 evaluations. When a request is made for updated or replacement  
25 evaluations, the State Department of State Hospitals shall perform  
26 the requested evaluations and forward them to the petitioning  
27 attorney and to the counsel for the person subject to this article.  
28 However, updated or replacement evaluations shall not be  
29 performed except as necessary to update one or more of the original  
30 evaluations or to replace the evaluation of an evaluator who is no

1 longer available to testify for the petitioner in court proceedings.  
2 These updated or replacement evaluations shall include review of  
3 available medical and psychological records, including treatment  
4 records, consultation with current treating clinicians, and interviews  
5 of the person being evaluated, either voluntarily or by court order.  
6 If an updated or replacement evaluation results in a split opinion  
7 as to whether the person subject to this article meets the criteria  
8 for commitment, the State Department of State Hospitals shall  
9 conduct two additional evaluations in accordance with subdivision  
10 (f) of Section 6601.

11 (2) For purposes of this subdivision, “no longer available to  
12 testify for the petitioner in court proceedings” means that the  
13 evaluator is no longer authorized by the Director of State Hospitals  
14 to perform evaluations regarding sexually violent predators as a  
15 result of any of the following:

16 (A) The evaluator has failed to adhere to the protocol of the  
17 State Department of State Hospitals.

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

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

21 (D) The independent professional or state employee who has  
22 served as the evaluator has resigned or retired and has not entered  
23 into a new contract to continue as an evaluator in the case, unless  
24 this evaluator, in his or her most recent evaluation of the person  
25 subject to this article, opined that the person subject to this article  
26 does not meet the criteria for commitment.

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

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

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

33 (g) The court shall notify the State Department of State Hospitals  
34 of the outcome of the trial by forwarding to the department a copy  
35 of the minute order of the court within 72 hours of the decision.

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

38 (i) Nothing in subparagraph (D) of paragraph (2) of subdivision  
39 (c) shall be construed to affect the authority of the State Department

1 of State Hospitals to conduct two additional evaluations when an  
2 updated or replacement evaluation results in a split opinion.

3 *(j) Notwithstanding any other law, the attorney petitioning for*  
4 *commitment and the counsel for the person subject to this article*  
5 *shall have the same access to records as an evaluator pursuant to*  
6 *paragraph (1) of subdivision (c), and the court shall issue a*  
7 *subpoena or court order for those records upon request. The*  
8 *attorneys may use the records in proceedings under this article*  
9 *and shall not disclose them for any other purpose. The records*  
10 *are confidential to the extent otherwise provided by law.*