

ASSEMBLY BILL

No. 888

Introduced by Assembly Member Rogan

February 22, 1995

An act to amend Section 6250 of, and to add Article 4 (commencing with Section 6600) to Chapter 2 of Part 2 of Division 6 of, the Welfare and Institutions Code, relating to sexual predators.

LEGISLATIVE COUNSEL'S DIGEST

AB 888, as introduced, Rogan. Sexually violent predators.

Existing law sets forth specified punishments for sex crimes, including, among others, rape, sodomy, oral copulation, penetration with a foreign object, and lewd and lascivious conduct.

This bill would provide that whenever the Director of Corrections determines that an individual who is under the jurisdiction of the Department of Corrections may be a sexually violent predator, he or she shall, at least 6 months prior to that individual's scheduled date for release from prison or termination of parole, refer the person for evaluation and, under specified circumstances, request that a petition for commitment be filed, and the proceedings be handled, by either the district attorney or the county counsel of the county in which the person was convicted of the offense for which he or she is under the jurisdiction of the Department of Corrections.

This bill would impose a state-mandated local program by requiring the district attorney or county counsel to file, and handle all proceedings relating to, petitions for commitment.

This bill would set forth procedures and standards for the review of the petition for commitment and would provide that a person who is the subject of the petition is entitled to a trial by jury, the assistance of counsel, the right to retain experts or professional persons to perform an examination on his or her behalf, and access to all relevant medical and psychological records and reports.

This bill would require a court or jury to determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court would be required to direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole. If the court or jury determines that the person is a sexually violent predator, the person would be committed to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health that is located on the grounds of an institution under the jurisdiction of the Department of Corrections until his or her mental abnormality or personality disorder has so changed that he or she is not likely to commit an act of sexual violence.

This bill would require annual evaluations of those individuals committed as sexually violent predators.

The bill also would set forth procedures and standards for requesting and hearing petitions for conditional and unconditional release.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.



This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. The Legislature finds and declares that
2 a small but extremely dangerous group of sexually violent
3 predators that generally have personality disorders can
4 be identified while they are incarcerated. These persons
5 are not safe to be at large and if released represent a
6 danger to the health and safety of others in that they are
7 likely to engage in acts of sexual violence. The Legislature
8 further finds and declares that it is in the interest of
9 society to identify these individuals prior to the expiration
10 of their terms of imprisonment. It is the intent of the
11 Legislature that once identified, these individuals, if
12 found to be likely to commit acts of sexually violent
13 criminal behavior beyond a reasonable doubt, be
14 confined and treated until such time that it can be
15 determined that they no longer present a threat to
16 society.

17 The Legislature further finds and declares that the
18 treatment needs of this population are very long term and
19 the treatment modalities that are appropriate for this
20 population are substantially different from those persons
21 currently receiving mental health treatment under the
22 Lanterman-Petris-Short Act (Part 1 (commencing with
23 Section 5000) of Division 5 of the Welfare and Institutions
24 Code) and, accordingly, a new civil commitment needs
25 to be established to address the treatment needs of this
26 population.

27 SEC. 2. Section 6250 of the Welfare and Institutions
28 Code is amended to read:

29 6250. As used in this part, “persons subject to judicial
30 commitment” means persons who may be judicially
31 committed under this part as mentally disordered sex



1 offenders pursuant to Article 1 (commencing with
 2 Section 6300), *sexually violent predators pursuant to*
 3 *Article 4 (commencing with Section 6600)*, or mentally
 4 retarded persons pursuant to Article 2 (commencing
 5 with Section 6500) of Chapter 2 of this part.

6 Nothing in this part shall be held to change or interfere
 7 with the provisions of the Penal Code and other laws
 8 relating to mentally disordered persons charged with
 9 crime or to the criminally insane.

10 This part shall be liberally construed so that, as far as
 11 possible and consistent with the rights of persons subject
 12 to commitment, ~~such~~ *those* persons shall be treated, not
 13 as criminals, but as sick persons.

14 SEC. 3. Article 4 (commencing with Section 6600) is
 15 added to Chapter 2 of Part 2 of Division 6 of the Welfare
 16 and Institutions Code, to read:

17
 18 Article 4. Sexually Violent Predators

19
 20 6600. As used in this article, the following terms have
 21 the following meanings:

22 (a) “Sexually violent predator” means a person who
 23 has been convicted of a sexually violent offense and who
 24 has a mental abnormality or personality disorder that
 25 makes the person a danger to the health and safety of
 26 others in that it is likely that he or she will engage in
 27 sexually violent criminal behavior upon release from state
 28 prison.

29 (b) “Sexually violent offense” means the following
 30 acts committed on, before, or after the effective date of
 31 this article: a felony violation of Section 261, 262, or 264.1,
 32 subdivision (c), (d), (f), (g), (i), (j), or (k) of Section 286,
 33 subdivision (c), (d), (f), (g), (i), (j), or (k) of Section
 34 288a, Section 288.5, subdivision (a), (b), (d), (e), (f), (g),
 35 or (j) of Section 289, or Section 289.5 of the Penal Code,
 36 where the violation is accomplished against a person’s will
 37 by means of force, violence, duress, menace, or fear of
 38 immediate and unlawful bodily injury on the person or
 39 another, or where the victim is under 14 years of age, or
 40 a felony violation of Section 288 of the Penal Code,



1 whenever one or more of the following circumstances is
2 true:

3 (1) The person has been previously convicted of any
4 felony offense specified in Section 261, 262, 264.1, 286,
5 288a, 288.5, 289, or 289.5 of the Penal Code, including any
6 conviction that qualifies under Section 668 of the Penal
7 Code, where the violation is accomplished against a
8 person's will by means of force, violence, duress, menace,
9 or fear of immediate and unlawful bodily injury on the
10 person or another, or where the victim is under 14 years
11 of age, or a felony violation of Section 288 of the Penal
12 Code.

13 (2) The person kidnapped the victim in violation of
14 Section 207, 208, or 209 of the Penal Code.

15 (3) The person inflicted great bodily injury on the
16 victim or another person during the commission of the
17 offense in violation of Section 12022.7 or 12022.8 of the
18 Penal Code.

19 (4) The person committed the offense during the
20 commission of a burglary in violation of Section 459 of the
21 Penal Code.

22 (5) The person used a deadly or dangerous weapon or
23 firearm in the commission of the offense.

24 (6) The person is convicted of committing any offense
25 specified in this subdivision against more than one victim,
26 of committing more than one of the offenses specified in
27 this subdivision against a victim who is under 14 years of
28 age, or of committing a felony violation of Section 288 of
29 the Penal Code.

30 (c) "Mental abnormality" means a congenital or
31 acquired condition affecting the emotional or volitional
32 capacity that predisposes the person to the commission of
33 criminal sexual acts in a degree constituting the person a
34 menace to the health and safety of others.

35 (d) As used in this article, "danger to the health and
36 safety of others" does not require proof of a recent overt
37 act.

38 6601. (a) Whenever the Director of Corrections
39 determines that an individual who is under the
40 jurisdiction of the Department of Corrections may be a



1 sexually violent predator, the director shall, at least six
2 months prior to that individual's scheduled date for
3 release from prison or termination of parole, whichever
4 is applicable, refer the person for evaluation in
5 accordance with this section.

6 (b) The person shall be evaluated by two practicing
7 psychiatrists or psychologists, or one practicing
8 psychiatrist and one practicing psychologist, designated
9 by the Director of Mental Health. If both evaluators
10 concur that the person has a mental abnormality or
11 personality disorder such that he or she is likely to engage
12 in acts of sexual violence without appropriate treatment
13 and custody, the Director of Mental Health shall forward
14 a request for a petition for commitment under Section
15 6602 to the county designated in subdivision (f). Copies
16 of the evaluation reports and any other supporting
17 documents shall be made available to the attorney
18 designated by the county pursuant to subdivision (f) who
19 may file a petition for commitment.

20 (c) If one of the professionals performing the
21 evaluation pursuant to subdivision (b) does not concur
22 that the person meets the criteria specified in subdivision
23 (b), but the other professional concludes that the person
24 meets those criteria, the Director of Mental Health shall
25 arrange for further examination of the person by two
26 independent professionals selected in accordance with
27 subdivision (h).

28 (d) If an examination by independent professionals
29 pursuant to subdivision (c) is conducted, a petition to
30 request commitment under this article shall only be filed
31 if both independent professionals who evaluate the
32 person pursuant to subdivision (c) concur that the person
33 meets the criteria for commitment specified in
34 subdivision (b). The professionals selected to evaluate
35 the person pursuant to subdivision (h) shall inform the
36 person that the purpose of their examination is not
37 treatment but to determine if the person meets certain
38 criteria to be involuntarily committed pursuant to this
39 article. It is not required that the person appreciate or
40 understand that information.



1 (e) If the person being evaluated for commitment
2 under this article is not currently in custody, evidence
3 shall be shown that the person committed a recent overt
4 act that indicates that he or she is likely to engage in
5 sexually violent criminal behavior if not evaluated and
6 committed pursuant to this article. If there is evidence of
7 an overt act by a person not currently in custody, the
8 Director of Corrections may cause the person to be
9 brought into custody and placed in a facility designated
10 by the Director of Mental Health to facilitate evaluation
11 and treatment and to ensure public safety. The facility
12 shall be located on the grounds of an institution under the
13 jurisdiction of the Department of Corrections.

14 (f) A petition for commitment shall be filed in the
15 superior court of the county in which the person was
16 convicted of the offense for which he or she is under the
17 jurisdiction of the Department of Corrections. The
18 petition shall be filed, and the proceedings shall be
19 handled, by either the district attorney or the county
20 counsel of that county. The county board of supervisors
21 shall designate either the district attorney or the county
22 counsel to assume responsibility for proceedings under
23 this article.

24 (g) The time limits set forth in subdivision (a) and
25 Section 6602 shall not apply during the first year that this
26 article is operative.

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

38 6602. A judge of the superior court shall review the
39 petition and shall determine whether there is probable
40 cause to believe that the individual named in the petition



1 is likely to engage in sexually violent criminal behavior
 2 upon his or her release. If the judge determines there is
 3 not probable cause, he or she shall dismiss the petition. If
 4 the judge determines that there is probable cause, the
 5 judge shall order that a trial be conducted to determine
 6 whether the person is, by reason of mental abnormality
 7 or personality disorder, a danger to the health and safety
 8 of others in that the person is likely to engage in acts of
 9 sexual violence upon his or her release from the
 10 jurisdiction of the Department of Corrections.

11 6603. (a) A person subject to this article shall be
 12 entitled to a trial by jury, the assistance of counsel, the
 13 right to retain experts or professional persons to perform
 14 an examination on his or her behalf, and have access to all
 15 relevant medical and psychological records and reports.
 16 In the case of a person who is indigent, the court shall
 17 appoint counsel to assist him or her, and, upon the
 18 person's request, assist the person in obtaining an expert
 19 or professional person to perform an examination or
 20 participate in the trial on the person's behalf.

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

24 (c) If no demand is made by the person subject to this
 25 article or the petitioning attorney, the trial shall be before
 26 the court without jury.

27 (d) A unanimous verdict shall be required in any jury
 28 trial.

29 6604. The court or jury shall determine whether,
 30 beyond a reasonable doubt, the person is a sexually
 31 violent predator. If the court or jury is not satisfied
 32 beyond a reasonable doubt that the person is a sexually
 33 violent predator, the court shall direct that the person be
 34 released at the conclusion of the term for which he or she
 35 was initially sentenced, or that the person be
 36 unconditionally released at the end of parole, whichever
 37 is applicable. If the court or jury determines that the
 38 person is a sexually violent predator, the person shall be
 39 committed to the custody of the State Department of
 40 Mental Health for appropriate treatment and



1 confinement in a secure facility designated by the
2 Director of Mental Health until his or her mental
3 abnormality or personality disorder has so changed that
4 he or she is not likely to commit an act of sexual violence.
5 The facility shall be located on the grounds of an
6 institution under the jurisdiction of the Department of
7 Corrections.

8 6605. (a) A person found to be a sexual violent
9 predator and committed to the custody of the State
10 Department of Mental Health shall have a current
11 examination of his or her mental condition made at least
12 once every year. The person may retain, or if he or she is
13 indigent and so requests, the court may appoint, a
14 qualified expert or professional person to examine him or
15 her, and the expert or professional person shall have
16 access to all records concerning the person.

17 (b) The director shall provide the committed person
18 with an annual written notice of his or her right to
19 petition the court for conditional release under Section
20 6608. The notice shall contain a waiver of rights. The
21 director shall forward the notice and waiver form to the
22 court with the annual report. If the person does not
23 affirmatively waive his or her right to petition the court
24 for conditional release, the court shall set a show cause
25 hearing to determine whether facts exist that warrant a
26 hearing on whether the person's condition has so changed
27 that he or she would not be a danger to the health and
28 safety of others if discharged. The committed person shall
29 have the right to be present and to have an attorney
30 represent him or her at the show cause hearing.

31 (c) If the court at the show cause hearing determines
32 that probable cause exists to believe that the committed
33 person's mental abnormality or personality disorder has
34 so changed that he or she is not a danger to the health and
35 safety of others and is not likely to engage in sexually
36 violent criminal behavior if discharged, then the court
37 shall set a hearing on the issue.

38 (d) At the hearing, the committed person shall have
39 the right to be present and shall be entitled to the benefit
40 of all constitutional protections that were afforded to him



1 or her at the initial commitment proceeding. The
2 attorney designated by the county pursuant to
3 subdivision (f) of Section 6601 shall represent the state
4 and shall have the right to demand a jury trial and to have
5 the committed person evaluated by experts chosen by the
6 state. The committed person also shall have the right to
7 have experts evaluate him or her on his or her behalf. The
8 court shall appoint an expert if the person is indigent and
9 requests an appointment. The burden of proof at the
10 hearing shall be on the state to prove beyond a reasonable
11 doubt that the committed person's mental abnormality or
12 personality disorder remains such that he or she is a
13 danger to the health and safety of others and is likely to
14 engage in sexually violent criminal behavior if
15 discharged.

16 6606. (a) A person who is committed under this
17 article shall be provided with programming by the State
18 Department of Mental Health which shall afford the
19 person with treatment for the underlying causes of his or
20 her mental abnormality or personality disorder.

21 (b) Amenability to treatment is not required for a
22 finding that any person is a person described in Section
23 6600, nor is it required for treatment of that person.
24 Treatment does not mean that the treatment be
25 successful or potentially successful, nor does it mean that
26 the person must recognize his or her problem and
27 willingly participate in the treatment program.

28 6607. (a) If the Director of Mental Health
29 determines that the person's mental abnormality or
30 personality disorder has so changed that the person is not
31 likely to commit acts of sexual violence while under
32 supervision and treatment in the community, the
33 director shall forward to the county attorney designated
34 in subdivision (f) of Section 6601 a request for the
35 attorney to petition the court for conditional release.

36 (b) When a petition for conditional release is filed at
37 the request of the Director of Mental Health, the court
38 shall hear the petition in accordance with the procedures
39 set forth in Section 6608.



1 6608. (a) Nothing in this article shall prohibit the
2 person who has been committed as a sexually violent
3 predator from petitioning the court for conditional
4 release and subsequent unconditional discharge without
5 the recommendation or concurrence of the Director of
6 Mental Health. If a person has previously filed a petition
7 for conditional release without the concurrence of the
8 director and the court determined, either upon review of
9 the petition or following a hearing, that the petition was
10 frivolous or that the petitioner's condition had not so
11 changed that he or she would not be a danger to others
12 if placed under supervision and treatment in the
13 community, then the court shall deny the subsequent
14 petition unless it contains facts upon which a court could
15 find that the condition of the petitioner had so changed
16 that a hearing was warranted. Upon receipt of a first or
17 subsequent petition from a committed person without
18 the concurrence of the director, the court shall endeavor
19 whenever possible to review the petition and determine
20 if it is based upon frivolous grounds and, if so, shall deny
21 the petition without a hearing.

22 (b) In no event shall a person who is committed
23 pursuant to this article be unconditionally released from
24 commitment until he or she has been placed in the
25 community under supervision and observation pursuant
26 to this section for at least one year.

27 (c) The court shall give notice of the hearing date to
28 the attorney designated in subdivision (f) of Section 6601,
29 the retained or appointed attorney for the committed
30 person, and the Director of Mental Health at least 15
31 court days before the hearing date.

32 (d) No hearing upon the petition shall be held until the
33 person who is committed has been under commitment
34 for confinement and care in a facility designated by the
35 Director of Mental Health for not less than one year from
36 the date of the order of commitment.

37 (e) The court shall hold a hearing to determine
38 whether the person petitioning for conditional release
39 would be a danger to the health and safety of others due
40 to his or her mental abnormality or personality disorder



1 if under supervision and treatment in the community. If
2 the court at the hearing determines that the petitioner
3 would not be a danger to others due to his or her mental
4 abnormality or personality disorder while under
5 supervision and treatment in the community, the court
6 shall order the petitioner placed with an appropriate
7 forensic conditional release program operated by the
8 state for one year. A substantial portion of the
9 state-operated forensic conditional release program shall
10 include outpatient supervision and treatment. The court
11 shall retain jurisdiction of the person throughout the
12 course of the program. At the end of one year, the court
13 shall hold a hearing to determine if the person should be
14 unconditionally released from commitment on the basis
15 that, by reason of a mental abnormality or personality
16 disorder, he or she is not a danger to the health and safety
17 of others. The court shall not make this determination
18 until the person has completed at least one year in the
19 state-operated forensic conditional release program. The
20 court shall notify the Director of Mental Health of the
21 hearing date.

22 (f) Before placing a petitioner in a state-operated
23 forensic conditional release program, the community
24 program director designated by the State Department of
25 Mental Health shall submit a written recommendation to
26 the court stating which forensic conditional release
27 program is most appropriate for supervising and treating
28 the petitioner. If the court does not accept the
29 community program director's recommendation, the
30 court shall specify the reason or reasons for its order on
31 the record. The procedures described in Sections 1605 to
32 1610, inclusive, of the Penal Code shall apply to the person
33 placed in the forensic conditional release program.

34 (g) If the court determines that the person should be
35 transferred to a state-operated forensic conditional
36 release program, the community program director, or his
37 or her designee, shall make the necessary placement
38 arrangements and, within 21 days after receiving notice
39 of the court's finding, the person shall be placed in the
40 community in accordance with the treatment and



1 supervision plan unless good cause for not doing so is
2 presented to the court.

3 (h) If the court rules against the petitioner at the trial
4 for unconditional release from commitment, the court
5 may place the petitioner on outpatient status in
6 accordance with the procedures described in Title 15
7 (commencing with Section 1600) of Part 2 of the Penal
8 Code.

9 (i) If the court denies the petition to place the person
10 in an appropriate forensic conditional release program or
11 if the petition for unconditional discharge is denied, the
12 person may not file a new application until one year has
13 elapsed from the date of the denial.

14 (j) In any hearing authorized by this section, the
15 petitioner shall have the burden of proof by a
16 preponderance of the evidence.

17 (k) If the petition for conditional release is not made
18 by the medical director of the state hospital or other
19 treatment facility to which the person is committed, no
20 action on the petition shall be taken by the court without
21 first obtaining the written recommendation of the
22 medical director of the state hospital or other treatment
23 facility.

24 (l) Time spent in a conditional release program
25 pursuant to this section shall not count toward the term
26 of commitment under this article unless the person is
27 confined in a locked facility during a portion of the
28 conditional release program, in which case the time spent
29 in a locked facility shall count toward the term of
30 commitment.

31 SEC. 4. Notwithstanding Section 17610 of the
32 Government Code, if the Commission on State Mandates
33 determines that this act contains costs mandated by the
34 state, reimbursement to local agencies and school
35 districts for those costs shall be made pursuant to Part 7
36 (commencing with Section 17500) of Division 4 of Title
37 2 of the Government Code. If the statewide cost of the
38 claim for reimbursement does not exceed one million
39 dollars (\$1,000,000), reimbursement shall be made from
40 the State Mandates Claims Fund.



1 Notwithstanding Section 17580 of the Government
2 Code, unless otherwise specified, the provisions of this act
3 shall become operative on the same date that the act
4 takes effect pursuant to the California Constitution.

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