AMENDED IN ASSEMBLY APRIL 25, 1995

AMENDED IN ASSEMBLY APRIL 17, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL No. 888

Introduced by Assembly ~~Member Rogan~~ *Members Rogan and Hoge*
(Coauthors: Assembly Members Aguiar, Boland, Bowler, and Rainey)

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 amended, 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. The bill would require the Department of Corrections and the Board of Prison Terms to screen the person based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history before referring the person to the State Department of Mental Health for a full evaluation.

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 for 2 years 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 or while subject
5 to the scrutiny of parole. These persons are not safe to be
6 at large and if released represent a danger to the health
7 and safety of others in that they are likely to engage in acts
8 of sexual violence. The Legislature further finds and
9 declares that it is in the interest of society to identify these
10 individuals prior to the expiration of their terms of
11 imprisonment or while subject to the scrutiny of parole.
12 It is the intent of the Legislature that once identified,
13 these individuals, if found to be likely to commit acts of
14 sexually violent criminal behavior beyond a reasonable
15 doubt, be confined and treated until such time that it can
16 be determined that they no longer present a threat to
17 society.
18 The Legislature further finds and declares that the
19 treatment needs of this population are very long term and
20 the treatment modalities that are appropriate for this
21 population are substantially different from those persons

currently receiving mental health treatment under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) and, accordingly, a new civil commitment needs to be established to address the treatment needs of this population.

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

6250. As used in this part, ‘‘persons subject to judicial commitment’’ means persons who may be judicially committed under this part as mentally disordered sex offenders pursuant to Article 1 (commencing with Section 6300), sexually violent predators pursuant to Article 4 (commencing with Section 6600), or mentally retarded persons pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of this part.

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

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

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

Article 4. Sexually Violent Predators

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

(a) ‘‘Sexually violent predator’’ means a person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence and who has a mental abnormality or personality disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination.

(b) ‘‘Sexually violent offense’’ means the following acts committed on, before, or after the effective date of this article and resulting in a conviction and a determinate sentence: a felony violation of paragraph (2) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262, Section 264.1, subdivision (a) or (b) of Section 288, or subdivision (a) of Section 289 of the Penal Code, or sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

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

(d) ‘‘Danger to the health and safety of others’’ does not require proof of a recent overt act while the offender is in custody.

(e) ‘‘Predatory’’ means an act is directed toward a stranger or individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) ‘‘Recent overt act’’ means any *criminal* act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

6601. (a) 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, the director shall, at least six months prior to that individual’s scheduled date for release from prison or termination of parole, whichever is applicable, refer the person for evaluation in accordance with this section.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of mental abnormalities and personality disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of personality disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a mental abnormality or personality disorder such that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (j). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county

pursuant to subdivision (j) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant 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 Director of Corrections 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 person being evaluated for commitment under this article is not currently in custody, evidence shall be shown that the person committed a recent overt act that indicates that he or she is likely to engage in sexually violent predatory criminal behavior if not evaluated and committed pursuant to this article. If there

is evidence of a recent overt act by a person not currently in custody, the Director of Corrections may cause the person to be brought into custody and placed in a facility designated by the Director of Mental Health to facilitate evaluation and treatment and to ensure public safety. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

(i) If the State Department of Mental Health 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 (j). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (j) who may file a petition for commitment.

(j) 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 is under the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

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

6602. A judge of the superior court shall review the petition and shall determine whether there is 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. *The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing. In the case of a person taken back into custody pursuant to subdivision (h) of Section 6601, the hearing to determine probable cause shall take place within 72 hours of the time that the person is taken back into custody.* If the judge determines there is not probable cause, he or she shall dismiss the petition. If the

judge determines that there is probable cause, the judge shall order that a trial be conducted to determine whether the person is, by reason of mental abnormality or personality disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections.

6603. (a) A person subject to this article shall be 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 have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

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

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

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

(e) In the case of a person taken back into custody pursuant to subdivision (h) of Section 6601, the trial shall commence within 45 days of the time that the person is taken back into custody.

6604. The court or jury shall 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 shall 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, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for two years 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, and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a new petition for commitment under this article or unless the term of commitment changes pursuant to subdivision (e) of Section 6605. Time spent on conditional release shall not count toward the two-year term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the two-year term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

6605. (a) A person found to be a sexual violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. 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 director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing.

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

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (j) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for a period of two years from the date of this ruling.

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

(b) Amenability to treatment is not required for a finding that any person is a person described in Section 6600, nor is it required for treatment of that person. Treatment does not mean that the treatment be successful or potentially successful, nor does it mean that

the person must recognize his or her problem and willingly participate in the treatment program.

(c) The programming provided by the State Department of Mental Health in facilities shall be consistent with current institutional standards for the treatment of sex offenders, and shall be based on a structured treatment protocol developed by the State Department of Mental Health. The protocol shall describe the number and types of treatment components that are provided in the program, and shall specify how assessment data will be used to determine the course of treatment for each individual offender. The protocol shall also specify measures that will be used to assess treatment progress and changes with respect to the individual's risk of reoffense.

6607. (a) If the Director of Mental Health determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the director shall forward a report and recommendation for conditional release in accordance with Section 6608 to the county attorney designated in subdivision (j) of Section 6601, the attorney of record for the person, and the committing court.

(b) When a report and recommendation for conditional release is filed by the Director of Mental Health pursuant to subdivision (a), the court shall set a hearing in accordance with the procedures set forth in Section 6608.

6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release and subsequent unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had

not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. *The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.*

(b) In no event shall a person who is committed pursuant to this article be unconditionally released from commitment until he or she has been placed in the community under supervision and observation pursuant to this section for at least one year, unless the community program director sooner makes a recommendation for unconditional release as described in subdivision (g).

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

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

(e) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her mental abnormality or personality disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her

mental abnormality or personality disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a mental abnormality or personality disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

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

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

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

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

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

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

(k) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(*l*) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

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

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act

shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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