

AMENDED IN SENATE JANUARY 22, 1996

AMENDED IN SENATE JULY 11, 1995

AMENDED IN SENATE JUNE 28, 1995

AMENDED IN ASSEMBLY MAY 15, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1496

Introduced by Assembly Member ~~Valerie Brown~~ Sher

(Coauthors: Senators Alquist, Ayala, Beverly, Boatwright, Calderon, Costa, Craven, Dills, Greene, Hayden, Haynes, Hughes, Hurtt, Johannessen, Johnson, Johnston, Kelley, Killea, Kopp, Leonard, Leslie, Lewis, Lockyer, Maddy, Mello, Monteith, Mountjoy, O'Connell, Peace, Petris, Polanco, Rogers, Rosenthal, Russell, Solis, Thompson, Watson, and Wright)

February 24, 1995

~~An act to amend Section 12027.1 of the Penal Code, relating to peace officers. An act to amend Sections 6601 and 6602 of, and to add and repeal Sections 6601.3 and 6601.5 of, the Welfare and Institutions Code, relating to sexually violent predators, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1496, as amended, ~~V. Brown~~ Sher. ~~Peace officers: disability: retirement~~ Sexually violent predators.

(1) Existing law specifies procedures for the civil commitment of sexually violent predators. Pursuant to these procedures, a person who is in custody under the jurisdiction of the Department of Corrections may be referred to the State Department of Mental Health for an evaluation as to whether the person may be a sexually violent predator.

This bill would provide that the Board of Prison Terms may order that such a person remain in custody for no more than 45 days for the purposes of the evaluation, except as provided.

This bill also would provide that, upon the filing of a petition for commitment of a person who is a sexually violent predator, a judge of the superior court shall review the petition and determine whether there is probable cause to believe the person is likely to engage in sexually violent predatory criminal behavior upon release. If the judge determines that there is probable cause for such a finding, the judge shall order the person to be detained in a secure facility.

These provisions would be repealed on January 1, 1998.

(2) Existing law also provides for a probable cause hearing for purposes of ordering the trial of a sexually violent predator.

This bill would provide that, if no probable cause is found, any person subject to parole shall report to parole. If there is probable cause for purposes of ordering a trial, the person shall remain in custody in a secure facility until the trial is completed.

The bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law provides that the identification certificate or endorsement issued to peace officers authorizing the officers to carry a concealed and loaded firearm is also applicable to honorably retired peace officers who during the course and scope of their employment as peace officers were authorized to, and did, carry firearms. However, no peace officer who is retired after January 1, 1989, because of a psychological disability may be issued an endorsement to carry a concealed and loaded firearm pursuant to this provision.~~

~~This bill would provide that the provision prohibiting an officer from carrying a concealed weapon if he or she retires because of a psychological disability does not apply to retirement due to stress, as specified.~~



Vote: ~~majority~~ ^{2/3}. Appropriation: no. Fiscal committee: ~~no~~
yes. State-mandated local program: no.

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

1 ~~SECTION 1.—Section 12027.1 of the Penal Code is~~
2 *SECTION 1. Section 6601 of the Welfare and*
3 *Institutions Code is amended to read:*

4 6601. (a) Whenever the Director of Corrections
5 determines that an individual who is in custody under the
6 jurisdiction of the Department of Corrections, and who
7 is either serving a determinate prison sentence or whose
8 parole has been revoked, may be a sexually violent
9 predator, the director shall, at least six months prior to
10 that individual's scheduled date for release from prison,
11 refer the person for evaluation in accordance with this
12 section.

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

27 (c) The State Department of Mental Health shall
28 evaluate the person in accordance with a standardized
29 assessment protocol, developed and updated by the State
30 Department of Mental Health, to determine whether the
31 person is a sexually violent predator as defined in this
32 article. The standardized assessment protocol shall
33 require assessment of diagnosable mental disorders, as
34 well as various factors known to be associated with the
35 risk of reoffense among sex offenders. Risk factors to be



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

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

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

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



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

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

22 (i) If the county's designated counsel concurs with the
23 recommendation, a petition for commitment shall be
24 filed in the superior court of the county in which the
25 person was convicted of the offense for which he or she
26 is under the jurisdiction of the Department of
27 Corrections. The petition shall be filed, and the
28 proceedings shall be handled, by either the district
29 attorney or the county counsel of that county. The county
30 board of supervisors shall designate either the district
31 attorney or the county counsel to assume responsibility
32 for proceedings under this article.

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

35 *SEC. 2. Section 6601.3 is added to the Welfare and*
36 *Institutions Code, to read:*

37 *6601.3. (a) The Board of Prison Terms may order*
38 *that a person referred to the State Department of Mental*
39 *Health pursuant to subdivision (b) of Section 6601 remain*
40 *in custody for no more than 45 days for full evaluation*



1 *pursuant to subdivisions (c) to (h), inclusive, of Section*
2 *6601, unless his or her scheduled date of release falls more*
3 *than 45 days after referral.*

4 *(b) This section shall remain in effect only until*
5 *January 1, 1998, and as of that date is repealed.*

6 *SEC. 3. Section 6601.5 is added to the Welfare and*
7 *Institutions Code, to read:*

8 *6601.5. (a) Upon filing of the petition and a request*
9 *for review under this section, a judge of the superior court*
10 *shall review the petition and determine whether the*
11 *petition states or contains sufficient facts that, if true,*
12 *would constitute probable cause to believe that the*
13 *individual named in the petition is likely to engage in*
14 *sexually violent predatory criminal behavior upon his or*
15 *her release. If the judge determines that the petition, on*
16 *its face, supports a finding of probable cause, the judge*
17 *shall order that the person be detained in a secure facility*
18 *until a hearing can be held pursuant to Section 6602. The*
19 *probable cause hearing provided for in Section 6602 shall*
20 *be held within 10 calendar days of the date of the order*
21 *issued by the judge pursuant to this section.*

22 *(b) This section shall remain in effect only until*
23 *January 1, 1998, and as of that date is repealed.*

24 *SEC. 4. Section 6602 of the Welfare and Institutions*
25 *Code is amended to read:*

26 *6602. A judge of the superior court shall review the*
27 *petition and shall determine whether there is probable*
28 *cause to believe that the individual named in the petition*
29 *is likely to engage in sexually violent predatory criminal*
30 *behavior upon his or her release. The person named in*
31 *the petition shall be entitled to assistance of counsel at the*
32 *probable cause hearing. If the judge determines there is*
33 *not probable cause, he or she shall dismiss the petition and*
34 *any person subject to parole shall report to parole. If the*
35 *judge determines that there is probable cause, the judge*
36 *shall order that the person remain in custody in a secure*
37 *facility until a trial is completed and shall order that a trial*
38 *be conducted to determine whether the person is, by*
39 *reason of a diagnosed mental disorder, a danger to the*
40 *health and safety of others in that the person is likely to*



1 engage in acts of sexual violence upon his or her release
2 from the jurisdiction of the Department of Corrections or
3 other secure facility.

4 *SEC. 5. This act is an urgency statute necessary for the*
5 *immediate preservation of the public peace, health, or*
6 *safety within the meaning of Article IV of the*
7 *Constitution and shall go into immediate effect. The facts*
8 *constituting the necessity are:*

9 *In order to provide immediate protection to the public*
10 *from sexually violent predators who will be released in*
11 *the near future, it is necessary that this act take effect*
12 *immediately.*

13 amended to read:

14 ~~12027.1. (a) (1) (A) (i) Any peace officer~~
15 ~~employed by an agency and listed in Section 830.1 or 830.2~~
16 ~~or subdivision (c) of Section 830.5 who retired after~~
17 ~~January 1, 1981, shall have an endorsement on the~~
18 ~~identification certificate stating that the issuing agency~~
19 ~~approves the officer's carrying of a concealed and loaded~~
20 ~~firearm.~~

21 ~~(ii) Any peace officer listed in Section 830.1 or 830.2 or~~
22 ~~subdivision (c) of Section 830.5 who retired prior to~~
23 ~~January 1, 1981, is authorized to carry a concealed and~~
24 ~~loaded firearm if the agency issued the officer an~~
25 ~~identification certificate and the certificate has not been~~
26 ~~stamped as specified in paragraph (2) of subdivision (a)~~
27 ~~of Section 12027.~~

28 ~~(iii) Peace officers not listed in clause (i) or (ii) who~~
29 ~~were authorized to, and did, carry firearms during the~~
30 ~~course and scope of their employment as peace officers,~~
31 ~~shall have an endorsement on the identification~~
32 ~~certificate stating that the issuing agency approves the~~
33 ~~officer's carrying of a concealed and loaded firearm.~~

34 ~~(B) An identification certificate authorizing the~~
35 ~~officer to carry a concealed and loaded firearm or an~~
36 ~~endorsement on the certificate may be revoked or denied~~
37 ~~by the issuing agency only upon a showing of good cause.~~
38 ~~Good cause shall be determined at a hearing, as specified~~
39 ~~in subdivision (d).~~



1 ~~(2) A retired peace officer may have his or her~~
2 ~~privilege to carry a concealed and loaded firearm~~
3 ~~revoked or denied by violating any departmental rule, or~~
4 ~~state or federal law that, if violated by an officer on active~~
5 ~~duty, would result in that officer's arrest, suspension, or~~
6 ~~removal from the agency.~~

7 ~~(b) (1) An identification certificate authorizing the~~
8 ~~officer to carry a concealed and loaded firearm or an~~
9 ~~endorsement may be revoked or denied by the issuing~~
10 ~~agency only upon a showing of good cause. Good cause~~
11 ~~shall be determined at a hearing, as specified in~~
12 ~~subdivision (d).~~

13 ~~(2) An identification certificate authorizing the officer~~
14 ~~to carry a concealed and loaded firearm or an~~
15 ~~endorsement may be revoked only after a hearing, as~~
16 ~~specified in subdivision (d). Any retired peace officer~~
17 ~~whose identification certificate authorizing the officer to~~
18 ~~carry a concealed and loaded firearm or an endorsement~~
19 ~~is to be revoked shall have 15 days to respond to the notice~~
20 ~~of the hearing. Notice of the hearing shall be served either~~
21 ~~personally on the retiree or sent by first-class mail,~~
22 ~~postage prepaid, return receipt requested to the retiree's~~
23 ~~last known place of residence. Upon the date the agency~~
24 ~~receives the signed registered receipt or upon the date~~
25 ~~the notice is served personally on the retiree, the retiree~~
26 ~~shall have 15 days to respond to the notification. A retired~~
27 ~~peace officer who fails to respond to the notice of the~~
28 ~~hearing shall forfeit his or her right to respond.~~

29 ~~(3) An identification certificate authorizing the officer~~
30 ~~to carry a concealed and loaded firearm or an~~
31 ~~endorsement may be denied prior to a hearing. If a~~
32 ~~hearing is not conducted prior to the denial of an~~
33 ~~endorsement, a retired peace officer, within 15 days of the~~
34 ~~denial, shall have the right to request a hearing. A retired~~
35 ~~peace officer who fails to request a hearing pursuant to~~
36 ~~this paragraph shall forfeit his or her right to the hearing.~~

37 ~~(e) A retired peace officer, when notified of the~~
38 ~~revocation of his or her privilege to carry a concealed and~~
39 ~~loaded firearm, after the hearing, or upon forfeiting his or~~
40 ~~her right to a hearing, shall immediately surrender to the~~



1 ~~issuing agency his or her identification certificate. The~~
2 ~~issuing agency shall reissue a new identification~~
3 ~~certificate without an endorsement. However, if the~~
4 ~~peace officer retired prior to January 1, 1981, and was at~~
5 ~~the time of his or her retirement a peace officer listed in~~
6 ~~Section 830.1 or 830.2 or subdivision (c) of Section 830.5,~~
7 ~~the issuing agency shall stamp on the identification~~
8 ~~certificate "No CCW privilege."~~

9 ~~(d) Any hearing conducted under this section shall be~~
10 ~~held before a three-member hearing board. One member~~
11 ~~of the board shall be selected by the agency and one~~
12 ~~member shall be selected by the retired peace officer or~~
13 ~~his or her employee organization. The third member shall~~
14 ~~be selected jointly by the agency and the retired peace~~
15 ~~officer or his or her employee organization.~~

16 ~~Any decision by the board shall be binding on the~~
17 ~~agency and the retired peace officer.~~

18 ~~(e) (1) No peace officer who is retired after January~~
19 ~~1, 1989, because of a psychological disability shall be issued~~
20 ~~an endorsement to carry a concealed and loaded firearm~~
21 ~~pursuant to this section. This subdivision does not apply~~
22 ~~to a peace officer who retires due to stress if the only~~
23 ~~significant manifestation of stress is a condition of~~
24 ~~hypertension, coronary disease, diverticulitis, ulcers,~~
25 ~~cancer, any combination thereof, or any other~~
26 ~~physiologically related condition.~~

27 ~~(2) For purposes of this section, a "psychological~~
28 ~~disability" is a mental disorder that is diagnosed using the~~
29 ~~terminology and criteria of the American Psychiatric~~
30 ~~Association's Diagnostic and Statistical Manual of Mental~~
31 ~~Disorders, or the terminology and diagnostic criteria of~~
32 ~~other psychiatric diagnostic manuals generally approved~~
33 ~~and accepted nationally by practitioners in the field of~~
34 ~~psychiatric medicine.~~

