

## Assembly Bill No. 1496

### CHAPTER 4

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.

[Approved by Governor January 25, 1996. Filed with Secretary of State January 25, 1996.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1496, Sher. 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These provisions would be repealed on January 1, 1998.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.

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

SECTION 1. Section 6601 of the Welfare and Institutions Code is amended to read:



6601. (a) Whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director shall, at least six months prior to that individual's scheduled date for release from prison, refer the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 diagnosable mental 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 mental 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 diagnosed mental 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 (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) 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 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 (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, 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.

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

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

6601.3. (a) The Board of Prison Terms may order that a person referred to the State Department of Mental Health pursuant to subdivision (b) of Section 6601 remain in custody for no more than 45 days for full evaluation pursuant to subdivisions (c) to (h), inclusive, of Section 6601, unless his or her scheduled date of release falls more than 45 days after referral.



(b) This section shall remain in effect only until January 1, 1998, and as of that date is repealed.

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

6601.5. (a) Upon filing of the petition and a request for review under this section, a judge of the superior court shall review the petition and determine whether the petition states or contains sufficient facts that, if true, would constitute 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. If the judge determines that the petition, on its face, supports a finding of probable cause, the judge shall order that the person be detained in a secure facility until a hearing can be held pursuant to Section 6602. The probable cause hearing provided for in Section 6602 shall be held within 10 calendar days of the date of the order issued by the judge pursuant to this section.

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

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

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. If the judge determines there is not probable cause, he or she shall dismiss the petition and any person subject to parole shall report to parole. If the judge determines that there is probable cause, the judge shall order that the person remain in custody in a secure facility until a trial is completed and shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental 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 or other secure facility.

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

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

