

Introduced by Senator Mountjoy

February 19, 1998

An act to amend Section 4536 of the Penal Code, and to amend Sections 6601, 6602, 6603, and 6609.1 of the Welfare and Institutions Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

SB 1976, as introduced, Mountjoy. Sexually violent predators.

(1) Existing law provides that every person committed to a public or private mental health facility as a mentally disordered sex offender, who escapes from or who escapes while being conveyed to or from that mental health facility, is punishable by imprisonment in the state prison or in the county jail not to exceed one year.

This bill would make this provision applicable as well to those persons committed to a mental health facility as a sexually violent predator. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

(2) Under existing law, whenever the Director of Corrections determines that an individual who is in custody, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director is required to refer the person for evaluation by the State Department of Mental Health, as specified. If the State Department of Mental Health determines that the person is a sexually violent predator, the Director of Mental Health is required to forward a request for



a petition to be filed for commitment to the county in which the person was convicted of the offense for which the person was committed to the jurisdiction of the Department of Corrections. Copies of the evaluation reports are required to be made available to the county-designated attorney who may file a petition for commitment.

This bill would provide that the county-designated attorney shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 30 days of the receipt from the department of the request for a petition for commitment.

(3) Existing law provides that a judge of the superior court shall review the petition for commitment and 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.

This bill would require the court to notify the State Department of Mental Health of the outcome of the probable cause hearing by forwarding to the department a copy of the minute order of the court within 15 days of the decision.

(4) Existing law provides that a person subject to commitment as a sexually violent predator is entitled to specified rights, including a trial by jury.

This bill would provide that the court shall notify the State Department of Mental Health of the outcome of the trial by forwarding to the department a copy of the minute order of the court within 72 hours of the decision.

(5) Existing law provides that if the court orders the immediate release of a sexually violent predator, the State Department of Mental Health shall notify the sheriff or chief of police, or both, and the district attorney, who has jurisdiction over the community in which the person is scheduled to be released at the time of release.

This bill would impose this notification duty on the court instead of the State Department of Mental Health.

(6) 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.



This bill would provide that no reimbursement is required by this act for a specified reason.

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. Section 4536 of the Penal Code is
2 amended to read:

3 4536. (a) Every person committed to a state hospital
4 or other public or private mental health facility as a
5 mentally disordered sex offender, *or under the provisions*
6 *of Article 4 (commencing with Section 6600) of Chapter*
7 *2 of Part 2 of the Welfare and Institutions Code*, who
8 escapes from or who escapes while being conveyed to or
9 from such state hospital or other public or private mental
10 health facility, is punishable by imprisonment in the state
11 prison or in the county jail not to exceed one year. The
12 term imposed pursuant to this section shall be served
13 consecutively to any other sentence or commitment.

14 (b) The medical director or person in charge of a state
15 hospital or other public or private mental health facility
16 to which a person has been committed as a mentally
17 disordered sex offender shall promptly notify the chief of
18 police of the city in which the hospital or facility is located,
19 or the sheriff of the county if the hospital or facility is
20 located in an unincorporated area, of the escape of the
21 person, and shall request the assistance of the chief of
22 police or sheriff in apprehending the person, and shall,
23 within 48 hours of the escape of the person, orally notify
24 the court that made the commitment, the prosecutor in
25 the case, and the Department of Justice of the escape.

26 SEC. 2. Section 6601 of the Welfare and Institutions
27 Code is amended to read:

28 6601. (a) Whenever the Director of Corrections
29 determines that an individual who is in custody under the
30 jurisdiction of the Department of Corrections, and who
31 is either serving a determinate prison sentence or whose
32 parole has been revoked, may be a sexually violent
33 predator, the director shall, at least six months prior to



1 that individual's scheduled date for release from prison,
2 refer the person for evaluation in accordance with this
3 section. However, if the inmate was received by the
4 department with less than nine months of his or her
5 sentence to serve, or if the inmate's release date is
6 modified by judicial or administrative action, the director
7 may refer the person for evaluation in accordance with
8 this section at a date that is less than six months prior to
9 the inmate's scheduled release date.

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

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

36 (d) Pursuant to subdivision (c), the person shall be
37 evaluated by two practicing psychiatrists or
38 psychologists, or one practicing psychiatrist and one
39 practicing psychologist, designated by the Director of
40 Mental Health. If both evaluators concur that the person



1 has a diagnosed mental disorder such that he or she is
2 likely to engage in acts of sexual violence without
3 appropriate treatment and custody, the Director of
4 Mental Health shall forward a request for a petition for
5 commitment under Section 6602 to the county
6 designated in subdivision (i). Copies of the evaluation
7 reports and any other supporting documents shall be
8 made available to the attorney designated by the county
9 pursuant to subdivision (i) who may file a petition for
10 commitment.

11 (e) If one of the professionals performing the
12 evaluation pursuant to subdivision (d) does not concur
13 that the person meets the criteria specified in subdivision
14 (d), but the other professional concludes that the person
15 meets those criteria, the Director of Mental Health shall
16 arrange for further examination of the person by two
17 independent professionals selected in accordance with
18 subdivision (g).

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

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



1 the person for purposes of any other proceedings under
2 this article.

3 (h) If the State Department of Mental Health
4 determines that the person is a sexually violent predator
5 as defined in this article, the Director of Mental Health
6 shall forward a request for a petition to be filed for
7 commitment under this article to the county designated
8 in subdivision (i). Copies of the evaluation reports and
9 any other supporting documents shall be made available
10 to the attorney designated by the county pursuant to
11 subdivision (i) who may file a petition for commitment
12 in the superior court.

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

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

26 (k) If the person is otherwise subject to parole, a
27 finding or placement made pursuant to this article shall
28 not toll, discharge, or otherwise affect the term of parole
29 pursuant to Article 1 (commencing with Section 3000) of
30 Chapter 8 of Title 1 of Part 3 of the Penal Code.

31 *(l) Pursuant to subdivision (d), the attorney*
32 *designated by the county pursuant to subdivision (i) shall*
33 *notify the State Department of Mental Health of its*
34 *decision regarding the filing of a petition for commitment*
35 *within 30 days of the receipt from the department of the*
36 *request for a petition for commitment.*

37 SEC. 3. Section 6602 of the Welfare and Institutions
38 Code is amended to read:

39 6602. (a) A judge of the superior court shall review
40 the petition and shall determine whether there is



1 probable cause to believe that the individual named in
2 the petition is likely to engage in sexually violent
3 predatory criminal behavior upon his or her release. The
4 person named in the petition shall be entitled to
5 assistance of counsel at the probable cause hearing. If the
6 judge determines there is not probable cause, he or she
7 shall dismiss the petition and any person subject to parole
8 shall report to parole. If the judge determines that there
9 is probable cause, the judge shall order that the person
10 remain in custody in a secure facility until a trial is
11 completed and shall order that a trial be conducted to
12 determine whether the person is, by reason of a
13 diagnosed mental disorder, a danger to the health and
14 safety of others in that the person is likely to engage in acts
15 of sexual violence upon his or her release from the
16 jurisdiction of the Department of Corrections or other
17 secure facility.

18 *(b) The court shall notify the State Department of*
19 *Mental Health of the outcome of the probable cause*
20 *hearing by forwarding to the department a copy of the*
21 *minute order of the court within 15 days of the decision.*

22 SEC. 4. Section 6603 of the Welfare and Institutions
23 Code is amended to read:

24 6603. (a) A person subject to this article shall be
25 entitled to a trial by jury, the assistance of counsel, the
26 right to retain experts or professional persons to perform
27 an examination on his or her behalf, and have access to all
28 relevant medical and psychological records and reports.
29 In the case of a person who is indigent, the court shall
30 appoint counsel to assist him or her, and, upon the
31 person's request, assist the person in obtaining an expert
32 or professional person to perform an examination or
33 participate in the trial on the person's behalf.

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

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

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

3 (e) *The court shall notify the State Department of*
4 *Mental Health of the outcome of the trial by forwarding*
5 *to the department a copy of the minute order of the court*
6 *within 72 hours of the decision.*

7 SEC. 5. Section 6609.1 of the Welfare and Institutions
8 Code is amended to read:

9 6609.1. (a) When any person committed as a sexually
10 violent predator is going to be unconditionally released,
11 the State Department of Mental Health shall notify the
12 sheriff or chief of police, or both, and the district attorney,
13 who has jurisdiction over the community in which the
14 person is scheduled to be released. Except as provided in
15 subdivision (b), the notice shall be given at least 15 days
16 prior to the scheduled release date and shall include the
17 name of the person who is scheduled to be released,
18 whether or not the person is required to register with law
19 enforcement, and the community in which the person
20 will reside.

21 (b) When a person committed as a sexually violent
22 predator is scheduled to be released to a county other
23 than the county from which he or she was committed, the
24 State Department of Mental Health shall provide written
25 notice of that release to the sheriff or police chief, or both,
26 and to the district attorney, who has jurisdiction over the
27 community in which the inmate is scheduled to be
28 released. The notice shall be made at least 45 days prior
29 to the scheduled release date and shall include the name
30 of the person who is scheduled to be released, whether or
31 not the person is required to register with local law
32 enforcement, and the community in which the person
33 will reside.

34 Those agencies receiving the notice referred to in this
35 subdivision shall have 15 days from receipt of the notice
36 to provide written comment to the department
37 regarding the impending release. Those comments shall
38 be considered by the department, which may modify its
39 decision regarding the community in which the person is
40 scheduled to be released, based on those comments.



1 (c) If the court orders the immediate release of a
2 sexually violent predator, the ~~department~~ court shall
3 notify the sheriff or chief of police, or both, and the
4 district attorney, who has jurisdiction over the
5 community in which the person is scheduled to be
6 released at the time of release.

7 (d) The notice required by this section shall be made
8 whether or not a request has been made pursuant to
9 Section 6609.

10 (e) The time limits imposed by this section are not
11 applicable where the release date of a sexually violent
12 predator has been advanced by a judicial or
13 administrative process or procedure that could not have
14 reasonably been anticipated by the State Department of
15 Mental Health and where, as the result of the time
16 adjustments, there is less than 30 days remaining on the
17 commitment before the inmate's release, but notice shall
18 be given as soon as practicable. In no case shall notice
19 required by this section to the appropriate agency be
20 later than the day of release. If, after the 45-day notice is
21 given to law enforcement and to the district attorney
22 relating to an out-of-county placement, there is change of
23 county placement, notice to the ultimate county of
24 placement shall be made upon the determination of the
25 county of placement.

26 SEC. 6. No reimbursement is required by this act
27 pursuant to Section 6 of Article XIII B of the California
28 Constitution because the only costs that may be incurred
29 by a local agency or school district will be incurred
30 because this act creates a new crime or infraction,
31 eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section
33 17556 of the Government Code, or changes the definition
34 of a crime within the meaning of Section 6 of Article
35 XIII B of the California Constitution.

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



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

O

