

Senate Bill No. 1976

CHAPTER 961

An act to add Section 4536.5 to the Penal Code, and to amend Sections 6600.05, 6601, 6602, 6602.5, 6603, 6609.1, 6609.2, and 6609.3 of, and to amend, repeal, and add Section 6604.1 of, the Welfare and Institutions Code, relating to sex offenses, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1998. Filed
with Secretary of State September 29, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1976, 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 a county jail not to exceed one year.

This bill would, with respect to a person committed to a mental health facility as a sexually violent predator, require the medical director or person in charge of the facility to promptly notify either the Department of Corrections' Sexually Violent Predator Parole Coordinator or local law enforcement officials upon the escape. This bill, to the extent it increases the duties of local officials, would impose a state-mandated local program.

(2) Existing law provides that Atascadero State Hospital shall be used whenever a person is committed to a secure facility for mental health treatment as a sex offender and is placed in a state hospital under the direction of the State Department of Mental Health.

This bill would provide that Atascadero State Hospital shall be used for this purpose only until a permanent housing and treatment facility is available, and would provide that a permanent facility for the housing and treatment of persons committed for mental health treatment shall be located on a site or sites determined by the Director of the State Department of Mental Health and the Director of Corrections, with subsequent approval by the Legislature. The bill would direct the State Department of Mental Health to operate this facility, and would provide that, absent direct authorization by the Legislature, only mentally disordered sex offenders shall be treated therein.

(3) 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that an individual who is in custody, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director is required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 15 days of making that decision.

(4) 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.

(5) Existing law requires a judge of the superior court to review any petition submitted by an agency requesting an urgency review in cases where an inmate's parole or temporary parole hold will expire before a probable cause hearing is conducted and to 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 provide that in no event shall more than 10 referrals be made to a superior court in any 30-day period for this purpose except upon agreement of the presiding judge of the court, the district attorney, the public defender, the sheriff, and the Director of Mental Health.

By requiring increased duties and responsibilities of local officials, this bill would impose a state-mandated local program.

(6) 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.

(7) Existing law requires a person who is determined to be a sexually violent predator to be committed for 2 years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility, as specified. Existing law also



provides that, until January 1, 1999, this 2-year term of commitment commences on the date upon which the court issues the initial order of commitment and is not reduced by any time spent in a secure facility prior to the order of commitment.

This bill would instead provide for the automatic repeal of these provisions relating to the date of commencement and term of the 2-year commitment period on July 1, 2001, at which time these provisions, minus the provision prohibiting the reduction of the term of commitment by any time spent in a secure facility prior to the order of commitment, would become operative.

(8) 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 instead require the court to notify the Department of Corrections' Sexually Violent Predator Parole Coordinator, and require the Department of Corrections to notify the State Department of Mental Health, as well as the other officials cited above, when the court orders the immediate release of a sexually violent predator. The bill also would provide that when the department makes any recommendation to the court concerning either the release or commitment of a sexually violent predator, it shall, at least 15 days in advance of making its recommendation, notify specified local law enforcement officials (a) where the person may be released, (b) where the person last resided, or (c) in the county which filed for the person's civil commitment. The bill would provide that if a person is otherwise subject to parole, he or she shall remain in physical custody for a period not to exceed 72 hours or until parole arrangements are made by the Department of Corrections' Sexually Violent Predator Parole Coordinator, whichever is sooner. The bill would provide for the facilitation of timely parole arrangements, as specified.

(9) Existing law authorizes a sheriff or chief of police to notify appropriate persons upon the impending release of a sexually violent predator.

This bill would expand this authorization to allow for notification to appropriate persons of the disposition of a sexually violent predator upon notice from the State Department of Mental Health of its recommendation to the court in connection with a commitment hearing.

(10) Existing law requires a sheriff or chief of police to notify requesting parties of the impending release of a sexually violent predator, but allows disclosure of the community in which the person will be placed only if it is (a) in the county of a requesting witness, victim, or family member, or (b) within 25 miles of the actual residence of a requesting witness, victim, or family member.



This bill would provide that any person requesting notice shall be informed of the identity of the court considering the conditional release, recommitment hearing, or review of commitment status. The bill would also allow victims, witnesses, and family members who request notification to be informed of the community where the person is scheduled to be placed if their actual residence is within 100 miles of that community.

(11) 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, with regard to an identified mandate, no reimbursement is required by this act for a specified reason.

With regard to other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(12) This 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 4536.5 is added to the Penal Code, to read:

4536.5. The medical director or person in charge of a state hospital or other public or private mental health facility to which a person has been committed under the provisions of Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of the Welfare and Institutions Code, shall promptly notify the Department of Corrections Sexually Violent Predator Parole Coordinator, the chief of police of the city in which the hospital or facility is located, or the sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the chief of police or sheriff in apprehending the person, and shall, within 48 hours of the escape of the person, orally notify the court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.

SEC. 2. Section 6600.05 of the Welfare and Institutions Code is amended to read:

6600.05. (a) Until a permanent housing and treatment facility is available, Atascadero State Hospital shall be used whenever a person is committed to a secure facility for mental health treatment pursuant to this article and is placed in a state hospital under the direction of the State Department of Mental Health unless there are unique circumstances that would preclude the placement of a person



at that facility. If a state hospital is not used, the facility to be used shall be located on a site or sites determined by the Director of Corrections and the Director of Mental Health. In no case shall a person committed to a secure facility for mental health treatment pursuant to this article be placed at Metropolitan State Hospital or Napa State Hospital.

(b) A permanent facility for the housing and treatment of persons committed pursuant to this article shall be located on a site or sites determined by the Director of Corrections and the Director of Mental Health, with approval by the Legislature through a trailer bill or other legislation. The State Department of Mental Health shall be responsible for operation of the facility, including the provision of treatment. In no event shall any persons other than those placed pursuant to this article be housed or treated at a facility established pursuant to this subdivision unless expressly authorized by the Legislature.

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

(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 so 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 was committed to 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.

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

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

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

6602. (a) 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.

(b) The court shall 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.



SEC. 5. Section 6602.5 of the Welfare and Institutions Code, as added by Section 4 of Chapter 19 of the Statutes of 1998, is amended to read:

6602.5. (a) No person may be placed in a state hospital pursuant to the provisions of this article until there has been a determination pursuant to Section 6601.3 or 6602 that there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior.

(b) The State Department of Mental Health shall identify each person for whom a petition pursuant to this article has been filed who is in a state hospital on or after January 1, 1998, and who has not had a probable cause hearing pursuant to Section 6602. The State Department of Mental Health shall notify the court in which the petition was filed that the person has not had a probable cause hearing. Copies of the notice shall be provided by the court to the attorneys of record in the case. Within 30 days of notice by the State Department of Mental Health, the court shall either order the person removed from the state hospital and returned to local custody or hold a probable cause hearing pursuant to Section 6602.

(c) In no event shall the number of persons referred pursuant to subdivision (b) to the superior court of any county exceed 10 in any 30-day period, except upon agreement of the presiding judge of the superior court, the district attorney, the public defender, the sheriff, and the Director of Mental Health.

(d) This section shall be implemented in Los Angeles County pursuant to a letter of agreement between the Department of Mental Health, the Los Angeles County district attorney, the Los Angeles County public defender, the Los Angeles County sheriff, and the Los Angeles County superior court. The number of persons referred to the superior court of Los Angeles County pursuant to subdivision (b) shall be governed by the letter of agreement.

SEC. 6. Section 6603 of the Welfare and Institutions Code is amended to read:

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) 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.

SEC. 7. Section 6604.1 of the Welfare and Institutions Code, as added by Section 5 of Chapter 19 of the Statutes of 1998, is amended to read:

6604.1. (a) The two-year term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section. The two-year term shall not be reduced by any time spent in a secure facility prior to the order of commitment. For subsequent extended commitments, the term of commitment shall be from the date of the termination of the previous commitment.

(b) This section shall become inoperative on July 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute that is enacted before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. Section 6604.1 is added to the Welfare and Institutions Code, to read:

6604.1. (a) The two-year term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section. For subsequent extended commitments, the term of commitment shall be from the date of the termination of the previous commitment.

(b) This section shall become operative on July 1, 2001.

SEC. 9. Section 6609.1 of the Welfare and Institutions Code is amended to read:

6609.1. (a) When the State Department of Mental Health makes a recommendation to the court for community outpatient treatment for any person committed as a sexually violent predator, it shall notify the sheriff or chief of police, or both, the district attorney, or the county's designated counsel, that have jurisdiction over the following locations:

- (1) The community in which the person may be released for community outpatient treatment.
- (2) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.
- (3) The county which filed for the person's civil commitment pursuant to this article.

The department shall also notify the Department of Corrections' Sexually Violent Predator Parole Coordinator, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

The notice shall be given at least 15 days prior to the department's submission of its recommendation to the court.

(b) When the State Department of Mental Health makes a recommendation to pursue recommitment, a recommendation not



to pursue recommitment, or seeks a judicial review of commitment status pursuant to subdivision (f) of Section 6605, of any person committed as a sexually violent predator, it shall provide written notice of that action to the sheriff or chief of police, or both, and to the district attorney, that have jurisdiction over the following locations:

(1) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(2) The probable community in which the person will be released, if recommending not to pursue recommitment.

(3) The county which filed for the person's civil commitment pursuant to this article.

The State Department of Mental Health shall also notify the Department of Corrections' Sexually Violent Predator Parole Coordinator, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of the Penal Code. The notice shall be made at least 15 days prior to the department's submission of its recommendation to the court.

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

(c) If the court orders the release of a sexually violent predator, the court shall notify the Department of Corrections Sexually Violent Predator Parole Coordinator. The Department of Corrections shall notify the State Department of Mental Health, the sheriff or chief of police, or both, and the district attorney, that have jurisdiction over the following locations:

(1) The community in which the person is to be released.

(2) The community in which the person maintained his or her last legal residence as defined in Section 3003 of the Penal Code.

The Department of Corrections shall make the above notifications regardless of whether the person released will be serving a term of parole after release by the court.

(d) If the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 300) of Chapter 8 of Title 1 of Part 3 of the Penal Code, to allow adequate time for the Department of Corrections to make appropriate parole arrangements upon release of the person, the person shall remain in physical custody for a period not to exceed 72 hours or until parole arrangements are made by the Department of Corrections' Sexually Violent Predator Parole Coordinator, whichever is sooner. To facilitate timely parole arrangements, notification to the Department of Corrections' Sexually Violent Predator Parole Coordinator of the pending release shall be made by telephone or facsimile and, to the extent possible,



notice of the possible release shall be made in advance of the proceeding or decision determining whether to release the person.

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

(f) The time limits imposed by this section are not applicable where the release date of a sexually violent predator has been advanced by a judicial or administrative process or procedure that could not have reasonably been anticipated by the State Department of Mental Health and where, as the result of the time adjustments, there is less than 30 days remaining on the commitment before the inmate's release, but notice shall be given as soon as practicable. In no case shall notice required by this section to the appropriate agency be later than the day of release.

(g) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 10. Section 6609.2 of the Welfare and Institutions Code is amended to read:

6609.2. (a) When any sheriff or chief of police is notified by the State Department of Mental Health of its recommendation to the court concerning the disposition of a sexually violent predator pursuant to subdivision (a) or (b) of Section 6609.1, that sheriff or chief of police may notify any person designated by the sheriff or chief of police as an appropriate recipient of the notice.

(b) A law enforcement official authorized to provide notice pursuant to this section, and the public agency or entity employing the law enforcement official, shall not be liable for providing or failing to provide notice pursuant to this section.

SEC. 11. Section 6609.3 of the Welfare and Institutions Code is amended to read:

6609.3. (a) At the time a notice is sent pursuant to subdivisions (a) and (b) of Section 6609.1, the sheriff, chief of police, or district attorney notified of the release shall also send a notice to persons described in Section 679.03 of the Penal Code who have requested a notice, informing those persons of the fact that the person who committed the sexually violent offense may be released together with information identifying the court that will consider the conditional release, recommendation regarding recommitment, or review of commitment status pursuant to subdivision (f) of Section 6605. When a person is approved by the court to be conditionally released, notice of the community in which the person is scheduled to reside shall also be given only if it is (1) in the county of residence of a witness, victim, or family member of a victim who has requested notice, or (2) within 100 miles of the actual residence of a witness, victim, or family member of a victim who has requested notice. If, after providing the witness, victim, or next of kin with the notice,



there is any change in the release date or the community in which the person is to reside, the sheriff, chief of police, or the district attorney shall provide the witness, victim, or next of kin with the revised information.

(b) At the time a notice is sent pursuant to subdivision (c) of Section 6609.1 the Department of Corrections shall also send a notice to persons described in Section 679.03 of the Penal Code who have requested a notice informing those persons of the fact that the person who committed the sexually violent offense has been released.

(c) In order to be entitled to receive the notice set forth in this section, the requesting party shall keep the sheriff, chief of police, and district attorney who were notified under Section 679.03 of the Penal Code, informed of his or her current mailing address.

SEC. 12. No reimbursement is required by Section 1 of this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other 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.

SEC. 13. 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.

