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**AB-2661 Mental health: sexually violent predators.** (2017-2018)

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Date Published: 09/27/2018 09:00 PM

**Assembly Bill No. 2661**

**CHAPTER 821**

An act to amend Section 6601 of the Welfare and Institutions Code, relating to mental health.

[ Approved by Governor September 27, 2018. Filed with Secretary of State September 27, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2661, Arambula. Mental health: sexually violent predators.

Existing law requires the Secretary of the Department of Corrections and Rehabilitation to refer a person who is in custody under that department's jurisdiction, who is serving a determinate sentence or whose parole has been revoked, for evaluation by the State Department of State Hospitals if the secretary determines that the person may be a sexually violent predator. Existing law requires a petition for commitment as a sexually violent predator to be filed in the county in which the person was convicted of the sexual offense for which the person was committed to the jurisdiction of the Department of Corrections and Rehabilitation.

This bill would additionally provide that if the person who is the subject of the petition for commitment is convicted of an offense that is not a sexually violent offense while in the custody of the Department of Corrections and Rehabilitation or the State Department of State Hospitals prior to resolution of the commitment petition, the jurisdiction for the petition for commitment would remain with the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the department. The bill would provide that if the person who is the subject of the petition for commitment is convicted of a subsequent sexually violent offense while in the custody of the Department of Corrections and Rehabilitation or the State Department of State Hospitals prior to the resolution of the first commitment petition, the jurisdiction for the subsequent petition for commitment would be the county in which the subsequent sexually violent offense occurred.

By imposing additional duties on counties regarding commitment of persons as sexually violent predators who have committed additional offenses while in the custody of the Department of Corrections and Rehabilitation or the State Department of State Hospitals, this bill would impose a state-mandated local program.

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, 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 the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

**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) (1) Whenever the Secretary of the Department of Corrections and Rehabilitation determines that an individual who is in custody under the jurisdiction of the Department of Corrections and Rehabilitation, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the secretary 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 secretary 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.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and Rehabilitation and the Board of Parole Hearings 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 State Hospitals in consultation with the Department of Corrections and Rehabilitation. 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 and Rehabilitation shall refer the person to the State Department of State Hospitals for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of State Hospitals shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of State Hospitals, 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 State Hospitals. 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 State Hospitals 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 State Hospitals 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) An independent professional who is designated by the Secretary of the Department of Corrections and Rehabilitation or the Director of State Hospitals 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) (1) If the State Department of State Hospitals determines that the person is a sexually violent predator as defined in this article, the Director of State Hospitals shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i) no less than 20 calendar days prior to the scheduled release date of the person. 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.

(2) If a hold is placed pursuant to Section 6601.3 and the State Department of State Hospitals determines that the person is a sexually violent predator as defined in this article, the Director of State Hospitals shall forward a request for a petition to be filed

for commitment under this article to the county designated in subdivision (i) no less than 20 calendar days prior to the end of the hold.

(3) The person shall have no right to enforce the time limit set forth in this subdivision and shall have no remedy for its violation.

(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 and Rehabilitation. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. A person's subsequent conviction for an offense that is not a sexually violent offense committed while in the custody of the Department of Corrections and Rehabilitation or the State Department of State Hospitals that occurs prior to the resolution of a petition filed pursuant to this section shall not change jurisdiction for the petition from 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 and Rehabilitation. If a person is convicted of a subsequent sexually violent offense committed while in the custody of the Department of Corrections and Rehabilitation or the State Department of State Hospitals that occurs prior to the resolution of a petition filed pursuant to this section a subsequent petition for commitment as a sexually violent predator pursuant to this section shall be filed in the superior court of the county in which the person was convicted of the subsequent sexually violent offense. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) An order issued by a judge pursuant to Section 6601.5, finding that the petition, on its face, supports a finding of 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, shall toll that person's parole pursuant to paragraph (4) of subdivision (a) of Section 3000 of the Penal Code, if that individual is determined to be a sexually violent predator.

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

**SEC. 2.** 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.