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AB-303 Mental health: sexually violent predators: trial: continuances. (2019-2020)

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Date Published: 10/09/2019 09:00 PM

Assembly Bill No. 303

CHAPTER 606

An act to amend Section 6603 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor October 08, 2019. Filed with Secretary of State October 08, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 303, Cervantes. Mental health: sexually violent predators: trial: continuances.

Existing law provides for the civil commitment of criminal offenders who have been determined to be sexually violent predators for treatment in a secure state hospital facility, as specified. Existing law requires the Secretary of the Department of Corrections and Rehabilitation to refer a prisoner for evaluation by the State Department of State Hospitals when the secretary determines that the person may be a sexually violent predator and specifies the judicial processes necessary for civil commitment as a sexually violent predator, including, but not limited to, the right to a jury trial.

This bill would establish procedures for requesting and granting continuances in these trials, as specified.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6603 of the Welfare and Institutions Code is amended to read:

6603. (a) A person subject to this article is entitled to a trial by jury, to the assistance of counsel, to the right to retain experts or professional persons to perform an examination on the person's behalf, and to have access to all relevant medical and psychological records and reports. If the person is indigent, the court shall appoint counsel to assist that person 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. Any right that may exist under this section to request DNA testing on prior cases shall be made in conformity with Section 1405 of the Penal Code.

(b) The attorney petitioning for commitment under this article has the right to demand that the trial be before a jury.

(c) To continue a trial, written notice shall be filed and served on all parties to the proceeding, together with affidavits or declarations detailing specific facts showing that a continuance is necessary.

(1) All moving and supporting papers shall be served and filed at least 10 court days before the hearing, except as provided in paragraph (2). The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court.

(2) If the written notice is served by mail, the 10-day period of notice before the hearing shall be increased as follows:

(A) Five calendar days if the place of mailing and the place of address are within the State of California.

(B) Ten calendar days if either the place of mailing or the place of address is outside the State of California, but within the United States.

(C) Twenty calendar days if either the place of mailing or the place of address is outside the United States.

(D) Two calendar days if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery.

(3) All papers opposing a continuance motion noticed pursuant to this subdivision shall be filed with the court and a copy shall be served on each party at least four court days before the hearing. All reply papers shall be served on each party at least two court days before the hearing. A party may waive the right to have documents served in a timely manner after receiving actual notice of the request for continuance.

(4) If a party makes a motion for a continuance that does not comply with the requirements described in this subdivision, the court shall hold a hearing on whether there is good cause for the failure to comply with those requirements. At the conclusion of the hearing, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted.

(5) Continuances shall be granted only upon a showing of good cause. The court shall not find good cause solely based on the convenience of the parties or a stipulation of the parties. At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding.

(6) In determining good cause, the court shall consider the general convenience and prior commitments of all witnesses. The court shall also consider the general convenience and prior commitments of each witness in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case.

(7) Except as specified in paragraph (8), a continuance shall be granted only for the period of time shown to be necessary by the evidence considered at the hearing on the motion. If a continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance.

(8) For purposes of this subdivision, "good cause" includes, but is not limited to, those cases in which the attorney assigned to the case has another trial or probable cause hearing in progress. A continuance granted pursuant to this subdivision as the result of another trial or hearing in progress shall not exceed 10 court days after the conclusion of that trial or hearing.

(d) (1) If the attorney petitioning for commitment under this article determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of State Hospitals to perform updated evaluations. If one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, the attorney petitioning for commitment under this article may request the State Department of State Hospitals to perform replacement evaluations. When a request is made for updated or replacement evaluations, the State Department of State Hospitals shall perform the requested evaluations and forward them to the petitioning attorney and to the counsel for the person subject to this article. However, updated or replacement evaluations shall not be performed except as necessary to update one or more of the original evaluations or to replace the evaluation of an evaluator who is no longer available to testify for the petitioner in court proceedings. These updated or replacement evaluations shall include review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated, either voluntarily or by court order. If an updated or replacement evaluation results in a split opinion as to whether the person subject to this article meets the criteria for commitment, the State Department of State Hospitals shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601.

(2) For purposes of this subdivision, "no longer available to testify for the petitioner in court proceedings" means that the evaluator is no longer authorized by the Director of State Hospitals to perform evaluations regarding sexually violent predators as a result of any of the following:

(A) The evaluator has failed to adhere to the protocol of the State Department of State Hospitals.

(B) The evaluator's license has been suspended or revoked.

(C) The evaluator is unavailable pursuant to Section 240 of the Evidence Code.

(D) The independent professional or state employee who has served as the evaluator has resigned or retired and has not entered into a new contract to continue as an evaluator in the case, unless this evaluator, in the evaluator's most recent

evaluation of the person subject to this article, opined that the person subject to this article does not meet the criteria for commitment.

(e) This section does not prevent the defense from presenting otherwise relevant and admissible evidence.

(f) If the person subject to this article or the petitioning attorney does not demand a jury trial, the trial shall be before the court without a jury.

(g) A unanimous verdict shall be required in any jury trial.

(h) The court shall notify the State Department of State Hospitals 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.

(i) This section does not limit any legal or equitable right that a person may have to request DNA testing.

(j) Subparagraph (D) of paragraph (2) of subdivision (d) does not affect the authority of the State Department of State Hospitals to conduct two additional evaluations when an updated or replacement evaluation results in a split opinion.

(k) (1) Notwithstanding any other law, the evaluator performing an updated evaluation shall include with the evaluation a statement listing all records reviewed by the evaluator pursuant to subdivision (d). The court shall issue a subpoena, upon the request of either party, for a certified copy of these records. The records shall be provided to the attorney petitioning for commitment and the counsel for the person subject to this article. The attorneys may use the records in proceedings under this article and shall not disclose them for any other purpose.

(2) This subdivision does not affect the right of a party to object to the introduction at trial of all or a portion of a record subpoenaed under paragraph (1) on the ground that it is more prejudicial than probative pursuant to Section 352 of the Evidence Code or that it is not material to the issue of whether the person subject to this article is a sexually violent predator, as defined in subdivision (a) of Section 6600, or to any other issue to be decided by the court. If the relief is granted, in whole or in part, the record or records shall retain any confidentiality that may apply under Section 5328 of this code and Section 1014 of the Evidence Code.

(3) This subdivision does not affect any right of a party to seek to obtain other records regarding the person subject to this article.

(4) Except as provided in paragraph (1), this subdivision does not affect any right of a committed person to assert that records are confidential under Section 5328 of this code or Section 1014 of the Evidence Code.