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SB-248 Sexually violent predators: open court proceedings. (2021-2022)

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Senate Bill No. 248

CHAPTER 383

An act to amend Section 6601 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 28, 2021. Filed with Secretary of State September 28, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 248, Bates. Sexually violent predators: open court proceedings.

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, within 6 months prior to the inmate's scheduled release date, to refer an inmate who is in custody under the jurisdiction of the Department of Corrections and Rehabilitation and is either serving a determinate sentence or whose parole has been revoked, for screening by the department and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a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. Under existing law, if this screening determines that the person is likely to be a sexually violent predator, the department is required to refer the person to the State Department of State Hospitals for a full evaluation.

This bill, for an individual who is in custody under the jurisdiction of the department for the commission of a new offense committed while the individual was serving an indeterminate term in a state hospital as a sexually violent predator, would require the Secretary of the Department of Corrections and Rehabilitation to refer the person directly to the State Department of State Hospitals for full evaluation as to whether the person still meets the criteria as a sexually violent predator. The bill would, if the evaluators concur that the requirements are still met, require the Director of State Hospitals to petition the court to either return the person to the State Department of State Hospitals to continue serving the remainder of the individual's original indeterminate commitment as a sexually violent predator if the original petition has not been dismissed, or to forward a request for a new petition to be filed if the original petition has been dismissed.

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

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) When 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, who is either serving a determinate prison sentence or whose parole has been revoked, and who is not in custody for the commission of a new offense committed while the individual was serving an indeterminate term in a state hospital as a sexually violent predator, 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 their 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) When an individual is in custody under the jurisdiction of the Department of Corrections and Rehabilitation for the commission of a new offense committed while the individual was serving an indeterminate term in a state hospital as a sexually violent predator, the Secretary of the Department of Corrections and Rehabilitation shall, at least six months prior to the individual's scheduled date for release from prison, refer the person directly to the State Department of State Hospitals for a full evaluation of whether the person still meets the criteria in Section 6600. However, if the inmate was received by the department with less than nine months of their 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. The evaluation shall be conducted in accordance with subdivisions (c) to (g), inclusive. If both evaluators concur that the person has a diagnosed mental disorder so that the person 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 court order no less than 20 calendar days prior to the scheduled release date of the person to the county designated in subdivision (i) authorizing a transfer of the individual from the Department of Corrections and Rehabilitation to the State Department of State Hospitals to continue serving the remainder of the individual's original indeterminate commitment as a sexually violent predator if the original petition has not been dismissed. If the petition has previously been dismissed, the Director of State Hospitals shall forward a request for a new petition to be filed for commitment to the county designated in subdivision (i) no less than 20 calendar days prior to the scheduled release date of the person consistent with subdivision (d).

(3) A petition may be filed under this section if the individual was in custody pursuant to a 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 applies 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 the person 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 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 the person 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 the person 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 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) 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 pursuant to subdivision (d) within 15 days of making that decision.