

Introduced by Senator BatesJanuary 22, 2021

An act to amend Section 6601 of, and to add Section 6600.2 to, the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

SB 248, as introduced, 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 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 require that proceedings for the civil commitment of a sexually violent predator be in open court, on the record, unless the court makes certain express findings, including that there exists an overriding interest, based on compelling and extraordinary circumstances, that overcomes the right of public access to the proceedings. The bill requires that there be 10 days' notice to all parties in a proceeding before the closure.

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of the Department of Corrections and Rehabilitation and is either serving a determinate sentence or whose parole has been revoked, for screening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.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6600.2 is added to the Welfare and
- 2 Institutions Code, to read:
- 3 6600.2. (a) In any proceeding under this article, the court shall
- 4 hold a hearing in open court, on the record. A court shall close the
- 5 courtroom to the public only upon making the findings described
- 6 in subdivision (c).
- 7 (b) The findings described in subdivision (c) shall be made prior
- 8 to closure of any portion of the proceedings and shall itself be in
- 9 open court. Notice to all parties of the proposed closure shall be
- 10 made at least 10 calendar days prior to the closure. Any closure is
- 11 reviewable by writ of mandate by either party.
- 12 (c) The court may only close the court proceedings if it expressly
- 13 finds facts that establish all of the following:
- 14 (1) There exists an overriding interest, based on compelling and
- 15 extraordinary circumstances, that overcomes the right of public

1 access to the proceedings. The discussion of a petitioner's or
2 respondent's psychological treatment shall not itself constitute
3 compelling and extraordinary circumstances.

4 (2) The overriding interest supports closing the proceedings.

5 (3) A substantial probability exists that the overriding interest
6 will be prejudiced if the proceeding is open.

7 (4) The proposed closure is narrowly tailored to include only
8 the portion of the proceedings for which there are compelling and
9 extraordinary circumstances justifying the closure.

10 (5) No less restrictive means exist to achieve the overriding
11 interest justified by the compelling and extraordinary
12 circumstances.

13 (d) The court may only seal records of these proceedings
14 pursuant to the California Rules of Court.

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

17 6601. (a) (1) ~~Whenever~~ *When* the Secretary of the Department
18 of Corrections and Rehabilitation determines that an individual
19 who is in custody under the jurisdiction of the Department of
20 Corrections and Rehabilitation, ~~and~~ who is either serving a
21 determinate prison sentence or whose parole has been revoked,
22 *and who is not in custody for the commission of a new offense*
23 *committed while the individual was serving an indeterminate term*
24 *in a state hospital as a sexually violent predator*, may be a sexually
25 violent predator, the secretary shall, at least six months prior to
26 that individual's scheduled date for release from prison, refer the
27 person for evaluation in accordance with this section. However,
28 if the inmate was received by the department with less than nine
29 months of ~~his or her~~ *their* sentence to serve, or if the inmate's
30 release date is modified by judicial or administrative action, the
31 secretary may refer the person for evaluation in accordance with
32 this section at a date that is less than six months prior to the
33 inmate's scheduled release date.

34 (2) *When an individual is in custody under the jurisdiction of*
35 *the Department of Corrections and Rehabilitation for the*
36 *commission of a new offense committed while the individual was*
37 *serving an indeterminate term in a state hospital as a sexually*
38 *violent predator, the Secretary of the Department of Corrections*
39 *and Rehabilitation shall, at least six months prior to the*
40 *individual's scheduled date for release from prison, refer the*

1 person directly to the State Department of State Hospitals for a
 2 full evaluation of whether the person still meets the criteria in
 3 Section 6600. However, if the inmate was received by the
 4 department with less than nine months of their sentence to serve,
 5 or if the inmate's release date is modified by judicial or
 6 administrative action, the secretary may refer the person for
 7 evaluation in accordance with this section at a date that is less
 8 than six months prior to the inmate's scheduled release date. The
 9 evaluation shall be conducted in accordance with subdivisions (c)
 10 through (g), inclusive. If both evaluators concur that the person
 11 has a diagnosed mental disorder so that the person is likely to
 12 engage in acts of sexual violence without appropriate treatment
 13 and custody, the Director of State Hospitals shall forward a request
 14 for a court order no less than 20 calendar days prior to the
 15 scheduled release date of the person to the county designated in
 16 subdivision (i) authorizing a transfer of the individual from the
 17 Department of Corrections and Rehabilitation to the State
 18 Department of State Hospitals to continue serving the remainder
 19 of the individual's original indeterminate commitment as a sexually
 20 violent predator if the original petition has not been dismissed. If
 21 the petition has previously been dismissed, the Director of State
 22 Hospitals shall forward a request for a new petition to be filed for
 23 commitment to the county designated in subdivision (i) no less
 24 than 20 calendar days prior to the scheduled release date of the
 25 person consistent with subdivision (d).

26 (2)

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

35 (b) The person shall be screened by the Department of
 36 Corrections and Rehabilitation and the Board of Parole Hearings
 37 based on whether the person has committed a sexually violent
 38 predatory offense and on a review of the person's social, criminal,
 39 and institutional history. This screening shall be conducted in
 40 accordance with a structured screening instrument developed and

1 updated by the State Department of State Hospitals in consultation
2 with the Department of Corrections and Rehabilitation. If as a
3 result of this screening it is determined that the person is likely to
4 be a sexually violent predator, the Department of Corrections and
5 Rehabilitation shall refer the person to the State Department of
6 State Hospitals for a full evaluation of whether the person meets
7 the criteria in Section 6600.

8 (c) The State Department of State Hospitals shall evaluate the
9 person in accordance with a standardized assessment protocol,
10 developed and updated by the State Department of State Hospitals,
11 to determine whether the person is a sexually violent predator as
12 defined in this article. The standardized assessment protocol shall
13 require assessment of diagnosable mental disorders, as well as
14 various factors known to be associated with the risk of reoffense
15 among sex offenders. Risk factors to be considered shall include
16 criminal and psychosexual history, type, degree, and duration of
17 sexual deviance, and severity of mental disorder.

18 (d) Pursuant to subdivision (c), the person shall be evaluated
19 by two practicing psychiatrists or psychologists, or one practicing
20 psychiatrist and one practicing psychologist, designated by the
21 Director of State Hospitals. If both evaluators concur that the
22 person has a diagnosed mental disorder so that ~~he or she~~ *the person*
23 is likely to engage in acts of sexual violence without appropriate
24 treatment and custody, the Director of State Hospitals shall forward
25 a request for a petition for commitment under Section 6602 to the
26 county designated in subdivision (i). Copies of the evaluation
27 reports and any other supporting documents shall be made available
28 to the attorney designated by the county pursuant to subdivision
29 (i) who may file a petition for commitment.

30 (e) If one of the professionals performing the evaluation pursuant
31 to subdivision (d) does not concur that the person meets the criteria
32 specified in subdivision (d), but the other professional concludes
33 that the person meets those criteria, the Director of State Hospitals
34 shall arrange for further examination of the person by two
35 independent professionals selected in accordance with subdivision
36 (g).

37 (f) If an examination by independent professionals pursuant to
38 subdivision (e) is conducted, a petition to request commitment
39 under this article shall only be filed if both independent
40 professionals who evaluate the person pursuant to subdivision (e)

1 concur that the person meets the criteria for commitment specified
2 in subdivision (d). The professionals selected to evaluate the person
3 pursuant to subdivision (g) shall inform the person that the purpose
4 of their examination is not treatment but to determine if the person
5 meets certain criteria to be involuntarily committed pursuant to
6 this article. It is not required that the person appreciate or
7 understand that information.

8 (g) An independent professional who is designated by the
9 Secretary of the Department of Corrections and Rehabilitation or
10 the Director of State Hospitals for purposes of this section shall
11 not be a state government employee, shall have at least five years
12 of experience in the diagnosis and treatment of mental disorders,
13 and shall include psychiatrists and licensed psychologists who
14 have a doctoral degree in psychology. The requirements set forth
15 in this section also shall apply to ~~any~~ professionals appointed by
16 the court to evaluate the person for purposes of any other
17 proceedings under this article.

18 (h) (1) If the State Department of State Hospitals determines
19 that the person is a sexually violent predator as defined in this
20 article, the Director of State Hospitals shall forward a request for
21 a petition to be filed for commitment under this article to the county
22 designated in subdivision (i) no less than 20 calendar days prior
23 to the scheduled release date of the person. Copies of the evaluation
24 reports and any other supporting documents shall be made available
25 to the attorney designated by the county pursuant to subdivision
26 (i) who may file a petition for commitment in the superior court.

27 (2) If a hold is placed pursuant to Section 6601.3 and the State
28 Department of State Hospitals determines that the person is a
29 sexually violent predator as defined in this article, the Director of
30 State Hospitals shall forward a request for a petition to be filed for
31 commitment under this article to the county designated in
32 subdivision (i) no less than 20 calendar days prior to the end of
33 the hold.

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

36 (i) If the county's designated counsel concurs with the
37 recommendation, a petition for commitment shall be filed in the
38 superior court of the county in which the person was convicted of
39 the offense for which ~~he or she~~ *the person* was committed to the
40 jurisdiction of the Department of Corrections and Rehabilitation.

1 The petition shall be filed, and the proceedings shall be handled,
2 by either the district attorney or the county counsel of that county.
3 A person's subsequent conviction for an offense that is not a
4 sexually violent offense committed while in the custody of the
5 Department of Corrections and Rehabilitation or the State
6 Department of State Hospitals that occurs prior to the resolution
7 of a petition filed pursuant to this section shall not change
8 jurisdiction for the petition from the county in which the person
9 was convicted of the offense for which ~~he or she~~ *the person* was
10 committed to the jurisdiction of the Department of Corrections
11 and Rehabilitation. If a person is convicted of a subsequent sexually
12 violent offense committed while in the custody of the Department
13 of Corrections and Rehabilitation or the State Department of State
14 Hospitals that occurs prior to the resolution of a petition filed
15 pursuant to this section a subsequent petition for commitment as
16 a sexually violent predator pursuant to this section shall be filed
17 in the superior court of the county in which the person was
18 convicted of the subsequent sexually violent offense. The county
19 board of supervisors shall designate either the district attorney or
20 the county counsel to assume responsibility for proceedings under
21 this article.

22 (j) An order issued by a judge pursuant to Section 6601.5,
23 finding that the petition, on its face, supports a finding of probable
24 cause to believe that the individual named in the petition is likely
25 to engage in sexually violent predatory criminal behavior upon ~~his~~
26 ~~or her~~ release, shall toll that person's parole pursuant to paragraph
27 (4) of subdivision (a) of Section 3000 of the Penal Code, if that
28 individual is determined to be a sexually violent predator.

29 ~~Pursuant to subdivision (d), the~~ *The* attorney designated by
30 the county pursuant to subdivision (i) shall notify the State
31 Department of State Hospitals of its decision regarding the filing
32 of a petition for commitment *pursuant to subdivision (d)* within
33 15 days of making that decision.