Senate Bill No. 536

CHAPTER 19

An act to amend Sections 6602, 6609.1, 6609.2, and 6609.3 of, to add Sections 6601.3, 6601.5, and 6602.5 to, and to add and repeal Section 6604.1 of, the Welfare and Institutions Code, relating to sexually violent predators, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 14, 1998. Filed with Secretary of State April 14, 1998.1

LEGISLATIVE COUNSEL'S DIGEST

SB 536, Mountjoy. Sexually violent predators.

(1) Existing law, repealed by its own terms as of January 1, 1998, authorized the Board of Prison Terms to order that a person who is screened as a sexually violeut predator and referred to the State Department of Mental Health for full evaluation remain in custody for no more than 45 days.

This bill would reenact this provision. The bill would provide that no person may be placed in a state hospital pursuant to these provisions until there has been a determination that there is probable cause to believe that the person named in the petition filed pursuant to these provisions is likely to engage in sexually violent predatory criminal behavior. The bill also would require the State Department of Mental Health to identify each person for whom a petition has been filed who has not had a probable cause hearing and to notify the court that the person has not had a hearing.

(2) Existing law, repealed by its own terms as of January 1, 1998, required a judge of the superior court to review any petition submitted by an agency requesting an urgency review in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 reenact this provision.

(3) 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.

This bill would provide, until January 1, 1999, that the 2-year term of commitment as a sexually violent predator commences on the date upon which the court issues the initial order of commitment and shall not be reduced by any time spent in a secure facility prior to the order

of commitment. The bill would specify that this provision does not constitute a change in, but is declaratory of, existing law.

(4) Existing law requires the State Department of Mental Health to notify local law enforcement officials 15 days prior to the scheduled release of a sexually violent predator.

This bill instead would require the department to notify local law enforcement officials 15 days prior to the submission to a court of its recommendation for community outpatient treatment for any person committed as a sexually violent predator or its recommendation not to pursue recommitment of the person.

(5) 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 6601.3 is added to the Welfare and Institutions Code, to read:

6601.3. The Board of Prison Terms may order that a person referred to the State Department of Mental Health pursuant to subdivision (b) of Section 6601 remain in custody for no more than 45 days for full evaluation pursuant to subdivisions (c) to (h), inclusive, of Section 6601, unless his or her scheduled date of release falls more than 45 days after referral.

SEC. 2. Section 6601.5 is added to the Welfare and Institutions Code, to read:

6601.5. In cases where an inmate's parole or temporary parole hold pursuant to Section 6601.3 will expire before a probable cause hearing is conducted pursuant to Section 6602, the agency bringing the petition may request an urgency review pursuant to this section. Upon that request, a judge of the superior court shall review the petition and determine whether the petition states or contains sufficient facts that, if true, would constitute 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. If the judge determines that the petition, on its face, supports a finding of probable cause, the judge shall order that the person be detained in a secure facility until a hearing can be held pursuant to Section 6602. The probable cause hearing provided for in Section 6602 shall be held within 10 calendar days of the date of the order issued by the judge pursuant to this section.

SEC. 3. Section 6602 of the Welfare and Institutions Code is amended to read:

6602. 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 that 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.

SEC. 4. Section 6602.5 is added to the Welfare and Institutions Code, to read:

6602.5. No person may be placed in a stale hospital pursuant lo 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.

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 slate 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.

SEC. 5. 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. 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 remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1999, deletes or extends that date.

SEC. 6. Section 6609.1 of the Welfare and Institutions Code is amended to read:

6609.1. (a) When the State Department of Mental Health is considering 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, and the district attorney, who has jurisdiction over the community in which

the person may be released. The notice shall be given at least 15 days prior to the department's submission of that recommendation to the court and shall include the name of the person who is scheduled to be released and the community in which civil commitment was established.

(b) When the State Department of Mental Health is considering a recommendation not to pursue recommitment of any person committed as a sexually violent predator, it shall provide written notice of that release to the sheriff or police chief, or both, and to the district attorney, who has jurisdiction over the community in which civil commitment was established. The notice shall be made at least 13 days prior to the date on which the notification is to be forwarded from the department to the court that will consider the department's recommendation not to pursue the extension of the civil commitment.

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 immediate release of a sexually violent predator, the department 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.

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

(c) 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. If, after the 45-day notice is given to law enforcement and to the district attorney relating to an out-of-county placement, there is change of county placement, notice to the ultimate county of placement shall be made upon the determination of the county of placement.

SEC. 7. 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 intention to make a 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. 8. Section 6609.3 of the Welfare and Institutions Code is amended to read:

6609.3. At the time a notice is sent pursuant to subdivision (a) or (b) of Section 6609.1, the sheriff, chief of police, or district attorney so notified 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 or unconditional release. 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 count) of residence of a witness, victim, or family member of a victim who has requested notice, or (2) within 25 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 status or the community in which the person is to reside, the sheriff, chief of police, or district attorney shall provide the witness, victim, or next of kin with the revised information.

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.

SIX. 9. The Legislature finds and declares that Section 3 of this act, which amends Section 6602 of the Welfare and Institutions Code, does not constitute a change in, but is declaratory of, existing law and consistent with current practice.

SEC. 10. The Legislature finds and declares that the provisions of Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code establish a civil mental health commitment for a period of two years for persons found to be sexually violent predators and that, consistent with a civil mental health commitment, credits that may reduce a term of imprisonment are not applicable. Accordingly, the Legislature finds and declares that Section 5 of this act, which adds Section 6604.1 to the Welfare and Institutions Code, does not constitute a change in, but is declaratory of, existing law.

SEC. 11. 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.

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