

**SEX OFFENDER COMMITMENT PROGRAM  
WIC 6600 (SEXUALLY VIOLENT PREDATOR)**

**CLINICAL EVALUATOR HANDBOOK**

**Revised  
September 1, 1998**

**California Department of Mental Health  
Sacramento, California**

**TABLE OF CONTENTS  
SEX OFFENDER  
COMMITMENT PROGRAM  
(SOCP)**

INTRODUCTION.....	PAGE 2
EVALUATOR LIABILITY REFERRAL FROM DEPARTMENT OF MENTAL HEALTH.....	PAGE 3
SCHEDULING AN EVALUATION.....	PAGE 4
ACCESS TO ATASCADERO STATE HOSPITAL ACCESS TO COUNTY JAILS.....	PAGE 5
DEFINITIONS RELEVANT TO SOCP.....	PAGE 6-7
BEGINNING THE SOCP EVALUATION THE CLINICAL INTERVIEW.....	PAGE 8-9
HISTORICAL FACTORS RISK FACTORS DRAWING CLINICAL CONCLUSIONS.....	PAGE 10
REPORT WRITING SUBMITTING THE REPORT COURT TESTIMONY.....	PAGE 11
SEX OFFENDER COMMITMENT PROGRAM CLINICAL EVALUATION PROTOCOL (SYNOPSIS).....	PAGE 12
SEX OFFENDER COMMITMENT PROGRAM CLINICAL EVALUATION PROTOCOL (ANNOTATED).....	PAGE 13-18
APPENDICES.....	PAGE 19

## INTRODUCTION

As a result of legislative concerns regarding the risk to public safety that results when violent, mentally disordered sex offenders are released from prison, the provisions of WIC 6600 (see Appendix A) went into effect on January 1, 1996. This statute, created by Chapter 763, Statutes of 1995 (AB 888, Rogan) established a new category of civil commitment for persons found, upon release from prison, to be sexually violent predators. The initial term of commitment is two years, and may be renewed through the filing of a new petition for civil commitment. The civil commitment is ended if the individual's diagnosed mental disorder has so changed that he or she is not likely to commit an act of sexual violence. The statute was modified by AB 3130 (Chapter 462, Statutes of 1996), AB 1496 (Chapter 4, Statutes of 1996), AB 2161 (Chapter 461, Statutes of 1996), and SB 536 (Chapter 19, Statutes of 1998).

The Department of Mental Health operating title for evaluation and treatment responsibilities under these statutes is the Sex Offender Commitment Program (SOCP). This manual henceforth refers to the evaluation of sexually violent predators under WIC 6600 as a function of the DMH Sex Offender Commitment Program.

The statute calls for the Department of Mental Health to designate two clinical evaluators (licensed psychiatrists and/or psychologists) to determine if an identified inmate has a diagnosed mental disorder such that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody. If these two evaluators agree that the inmate meets all criteria, the Director of Mental Health will request that the designated counsel in the county of the most recent judicial commitment file a petition for civil commitment. If there is a difference of opinion between DMH evaluators then examinations by two independent evaluators are required. These independent evaluators must also be licensed as either a psychiatrist or psychologist, cannot be state government employees, and must have at least five years of experience in the diagnosis and treatment of mental disorders. The Director may only request that a petition for commitment be filed if both the independent examiners concur that the inmate meets SOCP criteria.

The Department of Mental Health has on file a listing of the designated counsel for each county to which SOCP referrals are sent. The letter of referral, signed by the Director, contains a recommendation that a petition for civil commitment be filed. Enclosed with the letter are all evaluations completed by DMH clinical evaluators, as well as all background information originally provided by the Department of Corrections to DMH and additional material collected by DMH. The decision to file the petition subsequent to referral will be made by the local designated counsel.

**EVALUATOR LIABILITY**

In Section 1618 of the Penal Code, the following statement addresses liability for independent Contract Evaluators who perform evaluations and provide court testimony in cases:

The administrators and the supervision and treatment staff of the Forensic Conditional Release Program shall not be held criminally or civilly liable for any criminal acts committed by the persons on parole or judicial commitment status who receive supervision or treatment. This waiver of liability shall apply to employees of the State Department of Mental Health, the Board of Prison Terms, and the agencies or persons under contract to those agencies, who provide screening, clinical evaluation, supervision, or treatment to mentally ill parolees or persons under judicial commitment, or considered for placement under a hold by the Board of Prison Terms.

**REFERRAL FROM DEPARTMENT OF MENTAL HEALTH**

Upon acceptance of a referral by the evaluator, DMH sends a referral package. This package contains:

- The CDC material which was sent to DMH.
- Additional supportive material obtained by DMH record reviewers.
- Statistical summaries filled out by a DMH record review staff for use in assessing risk analysis.

Should you need any additional information or have any questions regarding the record review, contact the record reviewer who prepared the case. You can locate the appropriate record reviewer by calling the S.O.C.P. Evaluation Unit at (916) 653-0673.

Before the case is referred for evaluation, DMH record review staff have reviewed the material to assure that basic SOCP legal criteria are met (number of convictions, victims, etc.). However, the evaluator should confirm this information since it will be included in the final report.

**SCHEDULING AN EVALUATION**

You are responsible for scheduling your evaluation at the prison or facility where the inmate is housed. The majority of the inmates are in CDC institutions. However some inmates may be in local custody or at Atascadero State Hospital (ASH). Procedures for gaining access to these facilities are as follows:

***Access to the Prisons***

1. Call the Classification and Parole Representative (C&PR) at the prison where the inmate is housed to schedule the evaluation. The C&PR or a designee will schedule the interview and usually be your contact person at the prison.
2. Tell the C&PR you need:
  - a. Quiet interview room with an optimal amount of privacy.
  - b. Gate clearance to get into the prison, unless you possess a CDC ID card.
  - c. Custody supervision to ensure safety.
  - d. Time to review the Central and Medical files prior to the interview. Specify the amount of time needed.
  - e. Someone to make copies of relevant records from the files to take with you.
  - f. Time for the clinical interview of the inmate. Specify the amount of time needed.
3. Once you arrive at the prison, enter through the main gatehouse. Inform the gate officer of your assigned contact person. Your contact person will assist you in the logistics of moving through the prison and in the file review process. It is helpful to have the contact person's phone number with you, as the gate officers sometimes do not have this information.
4. Do not wear jeans, any denim-type material, or any light blue shirt with navy colored pants. This is the inmates' attire and CDC staff needs to be able to identify you as a visitor.
5. If you experience any difficulty, including lengthy waiting prior to an interview, please call DMH staff at (916) 653-0673 for assistance.

***Access to Atascadero State Hospital***

As a reminder, ASH is a forensic facility and, as such, has rules similar to correctional facilities. You must check into the secured area and be escorted at all times while in this area.

1. Call the Health Information Department, Legal Section to schedule the interview. (Staff appreciate one days notice if possible.) The individual's CDC files will be retained at the California Men's Colony (CMC) and a separate visit must be made for their review.
2. In addition you will need to speak with the visiting room officer (805) 468-2338 to schedule the use of the interview room in the visiting room.
3. You may check in at the main reception area for direction to the Health Information Department. You may review ASH records at this location prior to the interview.
4. You will return to the main reception area to check into the secured area of the hospital for the actual interview.
5. Do not wear khaki or any similar colored material. Again, as in the prisons, the staff needs to identify you as a visitor.

It is possible that an evaluation may need to be conducted at a state hospital other than Atascadero if the inmate has been temporarily housed there. The above rules may also apply. Before visiting any state hospital to conduct an evaluation, contact the Forensic Coordinator at the hospital for specific instructions.

***Access to County Jails***

The evaluator should call the jail to arrange for the interview. If necessary, access to individual county jails will be facilitated through the record review staff at DMH headquarters.

### DEFINITIONS RELEVANT TO SOCP

WIC 6600 sets forth several legal definitions that apply to the clinical evaluations. The following terms are defined in WIC 6600:

A. **"Sexually violent predator"** - A person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior. For the purposes of counting offenses and victims, consider only the "sexually violent offenses" listed in section (B) below. Countable offenses may include a prior finding of not guilty by reason of insanity, convictions prior to July 1, 1977 of offenses in (B) below, or a conviction resulting in a finding that the person was a mentally disordered sex offender. A conviction in another state for an offense that includes all the elements of an offense listed in (B) below, shall also be deemed to be a sexually violent offense even if the offender did not receive a determinate sentence for that prior offense.

B. **"Sexually violent offense"** - Defined as one of several specified crimes when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, and that are committed on, before, or after the effective date of this article and result in a conviction. "Sexually violent offenses" consist of the following Penal Code sections:

PC 261(a)(2)	Rape by Force and Violence
PC 262(a)(1)	Rape of Spouse by Force and Violence
PC 264.1	Defendant Acted in Concert with Another Person to Commit and Act in Section 261, 262, or 289
PC 286	Sodomy
PC 288(a)*	Lewd Act on Child Under 14 Years
PC 288(b)	Lewd Act on Child Under 14 Years by Force and by Force and Violence
PC 289(a)	Rape with Foreign Object by Force and Violence
PC 288a	Oral Copulation

\*Lewd acts on a child under 14 years of age, charged under PC 288(a), are deemed to be sexually violent when they involve "substantial sexual conduct". This is defined as "penetration of the vagina or rectum of either the victim or the offender by the penis or the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender".

C. **"Diagnosed mental disorder"** - A congenital or acquired condition affecting the emotional or volitional capacity that predisposes the

person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

- D. **"Danger to health and safety of others"** - Does not require proof of a recent overt act while the offender is in custody.
- E. **"Predatory"** - An act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.



## BEGINNING THE SOCP EVALUATION

The role of the clinical evaluator is of a fact finder. The only objective is to determine if the facts of a given case match the criteria contained in law. The evaluator must maintain a neutral position throughout the process, and be open to reconsideration of a conclusion based on new information.

The decision as to evaluation outcome is based on several factors including review of records, a clinical interview, if possible, diagnostic formulation and a risk assessment targeting sexual recidivism. Only after all available data is reviewed does the clinical evaluator arrive at a conclusion.

The evaluation will begin by reviewing available data including the Department of Corrections (CDC) central, medical and psychiatric files (if available) in the prison where the inmate is housed. Pertinent information will be contained throughout the CDC files, but the Probation Officers Report (POR), the CII report (rap sheet) and any psychiatric evaluations are essential to review. Many of the inmates to be evaluated will have had only brief mental health screenings or not have had a psychiatric evaluation, while others have had prior admissions to state and county psychiatric facilities. All psychiatric and criminal records available from both inside and outside of California should be reviewed prior to completing the clinical evaluation. While the evaluations require review of a substantial amount of material, the scope of the questions to be answered is narrow. The review of files and the clinical interview should be done with the specific forensic task in mind, namely, to answer the three clinical questions that are included in WIC 6600:

- 1) Has the inmate been convicted of sexually violent predatory offenses against two or more victims?
- 2) Does the inmate have a diagnosed mental disorder that predisposes the person to the commission of criminal sexual acts?
- 3) Is the inmate likely to engage in sexually violent criminal behavior as a result of his or her diagnosed mental disorder without appropriate treatment and custody?

## THE CLINICAL INTERVIEW

Although the inmate may view the clinical interview as adversarial, the evaluation is, in fact, one of several steps required before a court considers the matter of a civil commitment. The reports that the DMH evaluators and independent evaluators generate will be a primary resource for the district attorneys and county counsels in their review to determine if they will file a petition for commitment on an individual. They will be read by attorneys and judges, and will sometimes be presented to juries in

the form of expert testimony in Superior Court. These evaluations need to provide the county courts with more than just summary professional conclusions. It is therefore important to include key facts in the body of the evaluation and clearly state the reasoning that leads the evaluator to his or her conclusions.

The evaluator should begin the interview by describing the interview process and responding to questions from the inmate. First, the inmate should be asked to sign a "Notification of Evaluation as a Sexually Violent Predator" (Appendix B). The inmate may want to interview without signing the Notification, which is permissible since the purpose of the Notification is to provide information about WIC 6600 to the inmate, rather than to serve as a legal informed consent. If the inmate refuses the interview then a space is provided on the Notification for "decline" and a signature should be obtained. If the inmate refuses to attend the interview and the Notification cannot be signed; this should be reported in the evaluation. A spanish language translation of the notification form is available through the Department of Mental Health. It is recommended that you call the Department of Mental Health for instructions if a language barrier may necessitate a translator.

There may be a legal obligation to report specific new crimes that the inmate reveals if they involve child victims, if the crimes have not previously been reported, and/or there is a child who has been abused or is likely to suffer continuing abuse. This falls under the child abuse reporting laws in California and may require the evaluator to make a report to a child protective service agency. The inmate should be fully informed of this reporting requirement as included in the Notification, prior to the evaluation. Additionally, the inmate should be told that the evaluation report would be provided to the Department of Mental health, court officers in the county of CDC commitment in accordance with the statute, the Board of Prison Terms, and, in some cases, the CDC Parole. Also, information from the evaluation may be stated in court testimony and consequently, become available to the press and the community.

In rare instances, an inmate may become a threat to him/herself, others or you during the clinical interview. Just as you would make every effort to provide for the safety of all concerned in a community setting, you should do so in the prison setting. If the inmate becomes a threat immediately notify custody staff. Each prison has medical and/or psychiatric staff either present or on call who are designated to deal with this type of emergency. Report your clinical findings verbally to this clinician and write a progress note in the inmate's CDC medical file or the DMH medical chart which contains the name of the clinician you spoke with, your assessment of inmate risk of self harm or danger to others, and how the situation was resolved.

There are various approaches to interviewing sex offenders, and the determination of how to approach and structure the interview is made by the evaluator. While the evaluation protocol specifies the questions that must be answered (See page 8, Nos. 1-3.), it does not address everything an evaluator needs to consider. The interview will vary depending on many factors such as the type of offense, the inmate's history, and his/her willingness to discuss case factors.

### **HISTORICAL INFORMATION**

As in other clinical situations, the evaluator may not always be able to confirm information given by the inmate. This will often be the case with inmates who believe their self-interests are best served by denying their sexual disorder, criminal history, or psychiatric symptoms and attempting to present themselves in a favorable light. Reliable history and prior clinical evaluations from the inmate's records should be used to provide a basis for clinical decisions. The examiner can then integrate this information with data gained from the clinical interview.

### **DRAWING CLINICAL CONCLUSIONS**

The evaluators need to consider each of the three major clinical questions and offer clear and unambiguous opinions regarding the WIC 6600 criteria. It is in the nature of clinical evaluation that qualified professionals will sometimes draw different conclusions from the same data or emphasize some data over other data in formulating their opinions. Each evaluator should produce a report that represents his or her best clinical judgment. While evaluators will undoubtedly feel more confident about their decisions in some cases than they do in others, clearly stated definitive opinions with a YES or NO answer to each clinical question are required. At times, the facts may be conflicting or incomplete making an unequivocal clinical opinion impossible. If, after review of all the information available, you are unable to support an affirmative conclusion regarding a criterion, then that criterion has not been met and the answer is NO.

## **REPORT WRITING**

The mental health professional plays a critical role in implementing WIC 6600. The reports that the DMH evaluators and independent evaluators generate will be a primary resource for the district attorneys and county counsels in their review to determine if they will file a petition for commitment of an individual. An evaluation is correctly completed not because of its positive or negative outcome but because it comports with statute, is internally consistent and can be defended when challenged. Evaluation reports will be read by attorneys and judges and will sometimes be presented to juries in the form of expert testimony. Evaluations need to provide the courts with more than just summary professional conclusions. It is essential to include key facts in the body of the evaluation and clearly state the reasoning that led the evaluator to his or her conclusions. Usually the decision-makers will not have professional mental health backgrounds. Therefore, the evaluator must relate clinical findings into plain language that can be understood by the lay person. With the exception of diagnostic terms, evaluators should avoid unnecessary technical language from psychology, psychiatry and the law.

## **SUBMITTING THE REPORT**

After the evaluator has formed his/her conclusion, a clinical evaluation summary (see Appendix C) must be completed and faxed as soon as possible to DMH. This summary must represent the final conclusion of the evaluator. The final report, with original signature, must be delivered to DMH by the due date assigned by the scheduling staff.

## **COURT TESTIMONY**

As part of your agreement in accepting a case for evaluation, you may be asked to provide court testimony. The District Attorney who will contact you directly will usually request this testimony. If your evaluation resulted in a difference of opinion, and you concluded that criteria were not met, you may be subpoenaed by defense counsel to counter the expert testimony provided by the state. You should be prepared to explain your evaluation if asked to testify. It is recommended that you consult with the District Attorney or Defense Attorney prior to your testimony to offer information as to how you arrived at your conclusion.

As an expert witness, you should be familiar with the SVP law, research literature pertaining to sex offenders, and, of course, the specifics of the case. Regardless of who requires your attendance in court, or what you concluded in your report, you remain a "fact finder" having applied the requirements of the SVP statutes to a particular case.

**SEX OFFENDER COMMITMENT PROGRAM  
CLINICAL EVALUATION PROTOCOL  
(Synopsis)**

**I. IDENTIFYING INFORMATION**

**II. FINDINGS (WIC 6600 criteria)**

- A. Has the inmate been convicted of sexually violent predatory offenses against two or more victims? (Yes/No)
- B. Does the inmate have a diagnosed mental disorder that predisposes the person to the commission of criminal sexual acts? (Yes/No)
- C. Is the inmate likely to engage in sexually violent criminal behavior as a result of his/her diagnosed mental disorder without appropriate treatment and custody? (Yes/No)

**III. CONCLUSION**

**SEX OFFENDER COMMITMENT PROGRAM  
CLINICAL EVALUATION PROTOCOL  
(Annotated)**

**I. IDENTIFYING INFORMATION**

- A. Inmate Name
- B. California Department of Corrections Number (CDC number)
- C. Criminal Identification and Investigation number (CII)
- D. Date of Birth (DOB)
- E. Earliest Possible Release Date (EPRD), or Revocation Release Date (RRD), or Parole Revocation Release Date (PRRD), or Controlling Discharge Date (CDD)
- F. Facility
- G. County of Commitment
- H. Date of evaluation

Include here a short narrative discussion of the circumstances of the evaluation. This should include a brief description of the inmate; location and length of the interview; documentation of discussion of confidentiality; mandatory reporting and notification of evaluation as a sexually violent predator; and a list of materials reviewed, and other resources used.

**SOURCES OF INFORMATION**

List all documents you read and relied upon to form your clinical opinion. Include the date and case number of the document for clarification.

**II. FINDINGS (WIC 6600 Criteria)**

- A. Has the inmate been convicted of a sexually violent predatory offense against two or more victims? (Yes/No)**

Always quote the source of your information regarding the offense and then list each conviction of the relevant PC violations (i.e., PC 261 (a)(2); PC 262 (a)(1); PC 264.1; PC 288(a); PC 288(b); PC 289(a); PC 286; or PC 288 that makes a subject eligible for referral under WIC 6600. An example from a report, illustrates this documentation.

On 10-2-94, the inmate was convicted of two counts of PC 288(a) as noted in the Legal Status Summary Sheet contained in the CDC Central File. Information contained in the Probation Officer's Report (POR), Court #12345, written by Jane Smith indicates that on 3-4-89 the Los Angeles Police Department was contacted in response to possible child molestation.

List dates and provide narrative descriptions of the crimes involved. A thorough description of the commitment offense is necessary for several reasons. First, you will need to have an accurate account of the circumstances of the offense for court testimony. Second, this is often the only way one can untangle the complex circumstances that often arise, especially where multiple victims are involved. Finally, a detailed discussion of the offense helps the reader better understand the relationship between the victim and the perpetrator as it pertains to this statute.

**Do not use victims' names** in the descriptions of the offenses or anywhere else in the evaluation. It is suggested you number the qualifying victims for clarity.

For each qualifying victim, indicate whether each offense was "predatory" in nature. In WIC 6600 predatory is defined as, "an act toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization."

When the victim is a stranger, the relationship between the inmate and the victim is always predatory. In the case of casual relationships and relationships established or promoted for victimization, the evaluator must ascertain from records and the clinical interview the nature of the relationship between the inmate and the victim.

For each qualifying victim indicate whether force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person was involved. Evaluators sometimes assume that since they have already described the crime in detail a summary statement indicating that force and violence was involved in the offense is adequate. This is not the case. The evaluator needs to quote facts of the case and specific behaviors which indicate that force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person have occurred **for each qualifying victim**. Additionally, when the victim is under the age of 14, evaluators must note whether the behavior involved "**substantial sexual conduct**." If it did, the offense is countable as a "sexually violent offense" *whether or not* it contained "force, violence, duress, menace or fear of immediate or unlawful bodily injury on the victim or another person." However, substantial sexual conduct is not necessary for an offense to qualify if there were elements of force, violence, menace, duress and fear. Substantial sexual conduct never applies to cases where the victim is 14 years or older, such in as cases of adult rape.

Section 6600.1 (added to the Welfare and Institutions Code\* by SB 2161, Chapter 461, and effective January 1, 1997) reads as follows:

- (a) If the victim of an underlying offense that is specified in subdivision (b) of Section 6600 is a child under the age of 14 and the offending act or acts involved substantial sexual conduct, the offense shall constitute a "sexually violent offense" for the purposes of Section 6600.

- (b) **“Substantial sexual conduct”** means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either by the victim or the offender.

A summary statement should be made to address whether or not the conditions of Criterion A are met.



**B. Does the Inmate Have a diagnosed mental disorder that predisposes the person to the commission of criminal sexual acts? (Yes/No)**

"Diagnosed mental disorder" is defined in WIC 6600 as a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

According to this statute, the continuing danger posed by these inmates and the continuing basis for their judicial commitment is their currently diagnosed mental disorder that predisposes them to engage in sexually violent criminal behavior.

While the definition of a "diagnosed mental disorder" is statutorily defined, clinicians utilize the diagnostic categories in the Diagnostic and Statistical Manual of Mental Disorders-Fourth Edition (DSM-IV) to describe the diagnosed mental disorder. Since V Codes are not contained in the sixteen major diagnostic categories in the DSM-IV and only represent conditions that may be a focus of clinical attention or treatment, the use of V Codes for diagnostic purposes in SOCP evaluations is inappropriate (see p. 682 in DSM-IV). If a clinical interview is conducted, the psychiatric diagnosis offered should be based on psychiatric history, the mental status examination and current findings from the clinical interview. If a clinical interview is not conducted, a diagnostic impression can be offered if adequate records are available to confirm a diagnostic impression. While an evaluation completed using a record review alone and based on adequate records is both clinically and ethically appropriate, when an interview is not conducted, limitations of a record review should be clearly stated in the clinical evaluation.

The following areas should be addressed in an SOCP evaluation and discussed in Criterion "B".

- Brief developmental history
- Psychiatric history
- Substance abuse history
- Criminal history
- Institutional rules violations (CDC 115's)
- Psychosexual history
- Relationship history
- Mental Status Examination, behavioral observations and attitudes of the inmate
- Psychiatric diagnosis in **list format**
- Explanation of psychiatric diagnosis offered
- Justification for the psychiatric diagnosis

For inmates with a documented psychiatric history in CDC, a chronological account of pertinent evaluation and treatment should be documented under this criterion, along with the source of the information, date and contents.

A Mental Status Examination should be performed during the clinical interview and the evaluator should note behavioral observations and current attitude of the inmate. This clinical information with historical data will form the basis for the diagnosed mental disorder on AXIS I and II. The importance of a thorough sexual history is obvious for SOCP evaluations. Since level of deviant sexual preference is the crux of the paraphilia diagnosis and contributes to offender risk, the interview and evaluation should contain a thorough description of the extent of the offender's paraphiliac symptoms and behavior. It is well recognized that sex offenders commonly have multiple paraphilias, so every category of paraphilia should be considered, even if his or her documented behavior reflects a single type of paraphilia such as child molestation.

When examining paraphilias it is helpful to have a working definition of deviant sexual preference. Since normative sexual behavior is conducted by mutually consenting persons of similar age within a relationship of trust, sexual behavior outside of this definition is deviant both statistically and theoretically.

Deviant sexual preference may be examined by understanding the inmate's object choice, such as age and sex of victim and deviant behaviors, such as level of violence or voyeurism. Because it is difficult to access the nature of offenders' sexual fantasies and urges in SOCP evaluation interviews, most assessments of deviant sexual preference would be conducted based on history. If an offender does the same sexually deviant behavior many times, then an interest or preference is easily established. In instances where the activity has occurred only once, it is more difficult to determine if it is really a sexual preference, and hence a paraphilia. Basically, the longer the pattern of sexually deviant behavior, the stronger the preference. Another general rule in determining deviant sexual preference is that the rarer the sexual behavior, the fewer instances would be required to establish an interest or preference.

While the inmate may have numerous psychiatric diagnoses only those diagnoses that predispose the inmate to commit sexual offenses are pertinent to the legal definition of a "diagnosed mental disorder" in WIC 6600.

**C. Is the inmate likely to engage in sexually violent criminal behavior as a result of his or her diagnosed mental disorder without appropriate treatment and custody? (Yes/No)**

Criterion C requires a determination of the inmate's risk for future sexual re-offense if released to the community. This risk assessment includes an evaluation of the severity of the inmate's sexual deviancy, empirically derived risk factors for sexual re-offense and clinical factors relating to sexual re-offense. Research has indicated that actuarial prediction based on empirically derived risk factors for sex offending is more accurate than unguided clinical prediction. While all risk factors for sexual re-offense have yet to be determined, the evaluator is urged to consider known empirically derived risk factors from sex offender research since the use of these factors increases the accuracy of sex offense recidivism predictions.

The research literature has identified actuarial rating scales that can offer a general base rate of sexual re-offense. However, to date there are no pure actuarial rating scales which incorporate all risk factors for sexual re-offense. Consequently, the determination of a base rate for sexual re-offense is only the first step in risk assessment for SOCP cases. Once base rate information is derived, then consideration of empirically derived risk factors for sexual re-offense and clinical information about the inmate's diagnosed mental disorder should be considered. Also, since each offender has idiosyncratic factors which may increase or decrease the offenders risk, the evaluator should incorporate risk factors contained in each particular case which have relevance for sexual re-offense. Consideration of various risk factors for sexual re-offense in a given case may significantly change the final baserate for an offender.

While the determination of how to complete a sex offender risk assessment is ultimately up to each evaluator, the following information may assist the evaluator in completing an empirically guided clinical risk assessment.

Research indicates that base rates for sexual recidivism over an average of five years vary considerably and range from approximately 13 percent to 25 percent. As recidivism is measured for lengthier periods of time, the recidivism rate for both offenders who molest children and rape increases to an average of 37 percent to 52 percent over 25 to 30 years.

Recently, actuarial rating instruments have been developed which provide a rough prediction of sexual recidivism risk. One of these, The Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR) (Hanson, R. K., 1997) has modest predictive utility for sex offenders and can provide in many cases a general baseline risk for a particular offender based on norms for a large sex offender population. The RRASOR and other actuarial rating tools may prove helpful in the initial stages of determining an offender's risk. Keep in mind that these recidivism base rate estimates are based on data of detected sex offenses that have resulted in parole or conditional release violations or documented arrests and convictions. Since most sex offenses are unreported, these base rates underestimate the true risk of a sex offender.

Because there are no actuarial rating tools that include all the risk factors for sexual re-offending, it is necessary to examine other risk factors for sexual recidivism and adjust the offender's baseline risk accordingly. Research derived risk factors for sexual recidivism can be divided into static (primarily historical), unchangeable risk factors and dynamic risk factors (those risk factors that change over time). The following list includes some empirically derived static risk factors for sexual recidivism. This list is not all-inclusive and does not include risk factors that may be pertinent to a specific offender.

- Phallometric assessment

- Deviant sexual preference (see definition on p. 17)
- Total number of prior sex offenses
- Failure to complete sex offender treatment or re-offending with a new sex offense while attending sex offender treatment
- Having a prior psychiatric diagnosis of a Personality Disorder
- An offender who has a history of choosing strangers or unrelated individuals as victims
- An offender who chooses male children as victims
- An offender who has documented non-sexual general criminal and violent criminal offenses
- An offender with a pattern of hostility and anger toward others
- Offenders who have documented sex offenses at a young age
- Offenders who have never been married or had common law relationships of significant length.
- Offenders with diverse sex crimes
- Offenders with Psychopathy Checklist-Revised scores in the high 20's or above 30.
- Offenders with a prior history of a commitment to the California Department of Mental Health as a Mentally Disordered Sex Offender.

While research identifying the dynamic risk factors for sexual re-offense remains somewhat preliminary, some empirically derived dynamic risk factors have also been found to be predictors of sexual re-offense. The dynamic risk factors that have some predictive accuracy in predicting sexual recidivism include the following general categories.

**Intimacy deficits.** Offenders who have a lack of intimate relationships or existence of short term and unsatisfying relationships are at higher risk for sexual re-offense. These individuals may use relationships with others opportunistically without any meaningful interpersonal attachments. The ability of an offender to form stable, long lasting intimate relationships may mitigate risk.

**Negative peer influences.** Risk of sexual recidivism is increased when an offender continues to maintain contact and socialize, both in prison and in the community with individuals who provide negative influences such as peers who use drugs and alcohol,

have criminal lifestyles and have been involved in sex offending. The risk of sexual re-offense may be mitigated if the offender forms relationships with individuals who provide positive influences and help the offender minimize high-risk situations.

**Attitudes tolerant of sexual assault.** Higher risk offenders may see little wrong with sex offending and may justify their sexually deviant behavior with excuses and rationalizations. The lower risk offenders identify no situations in which sexual assault is justified and consistently view sexual offending as wrong.

**Emotional and sexual self-control.** In some high-risk offenders negative mood states and stressful situations consistently trigger deviant sexual imagery and the offender feels unable to control his or her sexual urges. The offender may report he or she feels overwhelmed and out of control prior to sex offending. The lower risk offender constantly copes adaptively with stressful situations without engaging in sexually deviant behavior.

**General self-regulation.** Offenders at high risk have poor compliance with supervision in the community. They may be disengaged with their parole agent or treatment clinician or be overly manipulative in supervision. He or she may miss treatment and may commonly expose themselves to high-risk situations. Lower risk offenders are consistently cooperative with supervision and treatment. They avoid high-risk situations, even when it involves personal sacrifice.

In summary, research has shown the population of sex offenders to be a heterogeneous group with many individual differences. While it is important to consider research on large groups of sex offenders to determine general factors that predict sexual recidivism, clinical factors in each individual case may change recidivism risk. Individual case factors may include risk factors for sexual re-offense such as inmate self-report of urges to molest or rape, drug and alcohol consumption that is linked to sexual re-offense or organic disorders which cause sexual disinhibition. An offender may have problematic institutional rules violations or exhibit behaviors that continually place the offender in high-risk situations while on parole. Conversely, factors such as meaningful participation in a lengthy and state of the art treatment program may mitigate an offender's recidivism risk.

The evaluator should discuss specific symptoms of the inmate's diagnosed mental disorder and how those symptoms and associated behaviors increase the likelihood that the inmate will commit a new sexually violent offense. The evaluator must establish a connection between the diagnosed mental disorder that makes the inmate a danger to the health and safety of the community and the probability the inmate will re-offend.

**Caution:** This brief discussion of sexual recidivism risk serves as educational training material and is not a standardized procedure required to be used for risk assessment by the Department of Mental Health.

### III. Conclusion

**THE FOLLOWING STATEMENT MUST BE USED AS THE CONCLUSION OF THE REPORT:**

Based on the above information, in my opinion the inmate meets/does not meet the criteria as a sexually violent predator as described in Section 6600 (a) of the Welfare and Institutions Code.

## APPENDICES

- A. Welfare and Institutions Code 6600
- B. Notification of Evaluation as a Sexually Violent Predator
- C. Clinical Evaluation Summary Form

# WIC 6600 CIVIL COMMITMENT CLINICAL EVALUATION SUMMARY

## I. IDENTIFYING INFORMATION

Inmate Name: \_\_\_\_\_

CDC# \_\_\_\_\_

## II. FINDINGS (WIC 6600 criteria)

YES

NO

- A. Has the inmate been convicted of a sexually violent predatory offense against two or more victims?

Convicted of a qualifying offense(s)?.....1.

☐☐

Use of force, fear, etc., and/or substantial sexual conduct? 1a.

☐☐

Against two or more victims?.....2.

☐☐

Predatory against two or more victims? .....3.

☐☐

- B. Does the inmate have a diagnosable mental disorder that predisposes person to the commission of criminal sexual acts?

(If YES, specify).....4.

☐☐

Axis I

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Axis II

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- C. Is the inmate likely to engage in sexually violent criminal behavior as a result of his/her diagnosed mental disorder without appropriate treatment and custody?

5.

☐☐

## III. CONCLUSION

Based on the above information, in my opinion the inmate:

☐ MEETS

☐ DOES NOT MEET

the criteria as a sexually violent predator as described in section 6600(a) of the Welfare and Institutions Code.

(If a NO response is marked for any of the above questions (1-5), then the inmate does not meet criteria)

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

PRINT NAME \_\_\_\_\_

LICENSE NUMBER \_\_\_\_\_



## NOTICE OF EVALUATION AS A SEXUALLY VIOLENT PREDATOR

Because of your past convictions for sexual crimes, you are being evaluated as a possible Sexually Violent Predator under the law (Section 6600 of the California Welfare and Institutions Code). The purpose of the evaluation is to decide if you have a mental condition that makes you likely to commit sexual crimes in the future. If you qualify under the law, you could be sent to court for trial. If the court finds you to be a Sexually Violent Predator, you could be sent to a treatment program at a state mental hospital. This would be an involuntary commitment to a treatment program run by the California Department of Mental Health.

This evaluation includes a review of your records and interviews with you by at least two doctors (psychologists or psychiatrists). The doctors will write reports on your case, and may later testify if your case goes to court. Any information you provide during the interviews may be used in the reports and court testimony.

If you give any new information about abuse of children or elders that has not been reported, the doctors are legally required to report this information to the authorities.

The interviews are voluntary, and you must give consent for the interview to proceed. If you don't consent to the interview, the evaluation will be completed using your records and other sources of information.

I have been informed about my evaluation as a Sexually Violent Predator and I have been offered a copy of this notification.

\_\_\_\_\_ I agree to be interviewed by Dr. \_\_\_\_\_  
for the purpose of evaluating me as a Sexually Violent Predator.

\_\_\_\_\_ I disagree to be interviewed by Dr. \_\_\_\_\_  
for the purpose of evaluating me as a Sexually Violent Predator.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Inmate's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Evaluator's Signature

**WELFARE AND INSTITUTIONS CODE  
SECTION 6600-6609.3**

6600. As used in this article, the following terms have the following meanings:

(a) "Sexually violent predator" means a person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

For purposes of this subdivision, a prior finding of not guilty by reason of insanity for an offense described in subdivision (b), a conviction prior to July 1, 1977, for an offense described in subdivision (b), a conviction resulting in a finding that the person was a mentally disordered sex offender, or a conviction in another state for an offense that includes all the elements of an offense described in subdivision (b), shall also be deemed to be a sexually violent offense even if the offender did not receive a determinate sentence for that prior offense.

Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(b) "Sexually violent offense" means the following acts when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as provided in subdivision (a): a felony violation of paragraph (2) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262, Section 264.1, subdivision (a) or (b) of Section 288, or subdivision (a) of Section 289 of the Penal Code, or sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code.

(c) "Diagnosed mental disorder" includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) "Danger to the health and safety of others" does not require proof of a recent overt act while the offender is in custody.

(e) "Predatory" means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) "Recent overt act" means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

6600.05. Atascadero State Hospital shall be used whenever a person is committed to a secure facility for mental health treatment pursuant to Section 6600 and is placed in a state hospital under the direction of the State Department of Mental Health unless there are unique circumstances that would preclude the placement of a person at that facility. If a state hospital is not used, the facility to be used shall be located on a site or sites determined by the Director of Corrections and the Director of Mental Health. In no case shall a person committed to a secure facility for mental health treatment pursuant to Section 6600 be placed at Metropolitan State Hospital or Napa State Hospital.

6600.1 (a) If the victim of an underlying offense that is specified in subdivision (b) of Section 6600 is a child under the age of 14 and the offending act or acts involved substantial sexual conduct, the offense shall constitute a "sexually violent offense" for purposes of Section 6600.

(b) "Substantial sexual conduct" means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

6601. (a) Whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director 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 director 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.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms 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 Mental Health in consultation with the Department of Corrections. 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 shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, 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 Mental Health. If both evaluators concur that the person has a diagnosed mental disorder such that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health 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 Mental Health 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) Any independent professional who is designated by the Director of Corrections or the Director of Mental Health 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) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article 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 in the superior court.

(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. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall not toll, discharge, or otherwise affect the term of parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

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.

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.

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.

6602.5. No person may be placed in a state hospital pursuant to 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 state 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.

6603. (a) A person subject to this article shall be entitled to a trial by jury, the assistance of counsel, the right to retain experts or professional persons to perform an examination on his or her behalf, and have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, 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.

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

(c) If no demand is made by the person subject to this article or the petitioning attorney, the trial shall be before the court without jury.

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

6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for two years to the custody of the State

Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health, and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a new petition for commitment under this article or unless the term of commitment changes pursuant to subdivision (e) of Section 6605. Time spent on conditional release shall not count toward the two-year term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the two-year term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

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.

6605 (a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

(b) The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing.

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and

shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for a period of two years from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he or she shall be unconditionally released and unconditionally discharged.

6606. (a) A person who is committed under this article shall be provided with programming by the State Department of Mental Health which shall afford the person with treatment for his or her diagnosed mental disorder.

(b) Amenability to treatment is not required for a finding that any person is a person described in Section 6600, nor is it required for treatment of that person. Treatment does not mean that the treatment be successful or potentially successful, nor does it mean that the person must recognize his or her problem and willingly participate in the treatment program.

(c) The programming provided by the State Department of Mental Health in facilities shall be consistent with current institutional standards for the treatment of sex offenders, and shall be based on a structured treatment protocol developed by the State Department of Mental Health. The protocol shall describe the number and types of treatment components that are provided in the program, and shall specify how assessment data will be used to determine the course of treatment for each individual offender. The protocol shall also specify measures that will be used to assess treatment progress and changes with respect to the individual's risk of reoffense.

6607 (a) If the Director of Mental Health determines that the person's diagnosed



mental disorder has so changed that the person is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the director shall forward a report and recommendation for conditional release in accordance with Section 6608 to the county attorney designated in subdivision (i) of Section 6601, the attorney of record for the person, and the committing court.

(b) When a report and recommendation for conditional release is filed by the Director of Mental Health pursuant to subdivision (a), the court shall set a hearing in accordance with the procedures set forth in Section 6608.

6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release and subsequent unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 15 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by

reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

(e) Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 21 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

(g) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

(j) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(k) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

6609. Within 10 days of a request made by the chief of police of a city or the sheriff of a county, the State Department of Mental Health shall provide the following information concerning each person committed as a sexually violent predator who is receiving outpatient care in a conditional release program in that city or county: name, address, date of commitment, county from which committed, date of placement in the conditional release program, fingerprints, and a glossy photograph no smaller than 3 1/8 X 3 1/8

inches in size, or clear copies of the fingerprints and photograph.

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 15 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.

(e) 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.

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.

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 county 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.

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## Appendix B

### **BILL NUMBER: SB 1976      ENROLLED**

#### **BILL TEXT**

PASSED THE SENATE    AUGUST 20, 1998  
PASSED THE ASSEMBLY    AUGUST 17, 1998  
AMENDED IN ASSEMBLY    AUGUST 10, 1998  
AMENDED IN ASSEMBLY    JULY 30, 1998  
AMENDED IN ASSEMBLY    JULY 9, 1998  
AMENDED IN SENATE    MAY 6, 1998  
AMENDED IN SENATE    APRIL 16, 1998  
AMENDED IN SENATE    APRIL 2, 1998

INTRODUCED BY    Senator Mountjoy

--                    FEBRUARY 19, 1998

An act to add Section 4536.5 to the Penal Code, and to amend Sections 6600.05, 6601, 6602, 6602.5, 6603, 6609.1, 6609.2, and 6609.3 of, and to amend, repeal, and add Section 6604.1 of, the Welfare and Institutions Code, relating to sex offenses, and declaring the urgency thereof, to take effect immediately.

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 1976, Mountjoy. Sexually violent predators.

(1) Existing law provides that every person committed to a public or private mental health facility as a mentally disordered sex offender, who escapes from or who escapes while being conveyed to or from that mental health facility, is punishable by imprisonment in the state prison or in a county jail not to exceed one year.

This bill would, with respect to a person committed to a mental health facility as a sexually violent predator, require the medical director or person in charge of the facility to promptly notify either the Department of Corrections' Sexually Violent Predator Parole Coordinator or local law enforcement officials upon the escape. This bill, to the extent it increases the duties of local officials, would impose a state-mandated local program.

(2) Existing law provides that Atascadero State Hospital shall be used whenever a person is committed to a secure facility for mental health treatment

as a sex offender and is placed in a state hospital under the direction of the State Department of Mental Health.

This bill would provide that Atascadero State Hospital shall be used for this purpose only until a permanent housing and treatment facility is available, and would provide that a permanent facility for the housing and treatment of persons committed for mental health treatment shall be located on a site or sites determined by the Director of the State Department of Mental Health and the Director of Corrections, with subsequent approval by the Legislature. The bill would direct the State Department of Mental Health to operate this facility, and would provide that, absent direct authorization by the Legislature, only mentally disordered sex offenders shall be treated therein.

(3) Under existing law, whenever the Director of Corrections determines that an individual who is in custody, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director is required to refer the person for evaluation by the State Department of Mental Health, as specified. If the State Department of Mental Health determines that the person is a sexually violent predator, the Director of Mental Health is required to forward a request for a petition to be filed for commitment to 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. Copies of the evaluation reports are required to be made available to the county-designated attorney who may file a petition for commitment.

This bill would provide that the county-designated attorney shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

(4) Existing law provides that a judge of the superior court shall review the petition for commitment and 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 require the court to notify the State Department of Mental Health of the outcome of the probable cause hearing by forwarding to the department a copy of the minute order of the court within 15 days of the decision.

(5) Existing law requires 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 provide that in no event shall more than 10 referrals be made to a superior court in any 30-day period for this purpose except upon agreement of the presiding judge of the court, the district attorney, the public defender, the sheriff, and the Director of Mental Health.

By requiring increased duties and responsibilities of local officials, this bill would impose a state-mandated local program.

(6) Existing law provides that a person subject to commitment as a sexually violent predator is entitled to specified rights, including a trial by jury.

This bill would provide that the court shall notify the State Department of Mental Health 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.

(7) 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. Existing law also provides that, until January 1, 1999, this 2-year term of commitment commences on the date upon which the court issues the initial order of commitment and is not reduced by any time spent in a secure facility prior to the order of commitment.

This bill would instead provide for the automatic repeal of these provisions relating to the date of commencement and term of the 2-year commitment period on July 1, 2001, at which time these provisions, minus the provision prohibiting the reduction of the term of commitment by any time spent in a secure facility prior to the order of commitment, would become operative.

(8) Existing law provides that if the court orders the immediate release of a sexually violent predator, the State Department of Mental Health 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.

This bill would instead require the court to notify the Department of Corrections' Sexually Violent Predator Parole Coordinator, and require the Department of Corrections to notify the State Department of Mental Health, as well as the other officials cited above, when the court orders the immediate release of a sexually violent predator. The bill also would provide that when the department makes any recommendation to the court concerning either the release or commitment of a sexually violent predator, it shall, at least 15 days in advance of making its recommendation, notify specified local law enforcement officials (a) where the person may be released, (b) where the person last resided, or (c) in the county which filed for the person's civil commitment. The bill would provide that if a person is otherwise subject to parole, he or she shall remain in physical custody for a period not to exceed 72 hours or until parole arrangements are made by the Department of Corrections' Sexually Violent Predator Parole Coordinator, whichever is sooner. The bill would provide for the facilitation of timely parole arrangements, as specified.

(9) Existing law authorizes a sheriff or chief of police to notify appropriate persons upon the impending release of a sexually violent predator.

This bill would expand this authorization to allow for notification to appropriate persons of the disposition of a sexually violent predator upon notice from the State Department of Mental Health of its recommendation to the court in connection with a commitment hearing.

(10) Existing law requires a sheriff or chief of police to notify requesting parties of the impending release of a sexually violent predator, but allows disclosure of the community in which the person will be placed only if it is (a) in

the county of a requesting witness, victim, or family member, or (b) within 25 miles of the actual residence of a requesting witness, victim, or family member.

This bill would provide that any person requesting notice shall be informed of the identity of the court considering the conditional release, recommitment hearing, or review of commitment status. The bill would also allow victims, witnesses, and family members who request notification to be informed of the community where the person is scheduled to be placed if their actual residence is within 100 miles of that community.

(11) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, with regard to an identified mandate, no reimbursement is required by this act for a specified reason.

With regard to other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(12) 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 4536.5 is added to the Penal Code, to read:

4536.5. The medical director or person in charge of a state hospital or other public or private mental health facility to which a person has been committed under the provisions of Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of the Welfare and Institutions Code, shall promptly notify the Department of Corrections Sexually Violent Predator Parole Coordinator, the chief of police of the city in which the hospital or facility is located, or the sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the chief of police or sheriff in apprehending the person, and shall, within 48 hours of the escape of the person, orally notify the court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.

SEC. 2. Section 6600.05 of the Welfare and Institutions Code is amended to read:



6600.05. (a) Until a permanent housing and treatment facility is available, Atascadero State Hospital shall be used whenever a person is committed to a secure facility for mental health treatment pursuant to this article and is placed in a state hospital under the direction of the State Department of Mental Health unless there are unique circumstances that would preclude the placement of a person at that facility. If a state hospital is not used, the facility to be used shall be located on a site or sites determined by the Director of Corrections and the Director of Mental Health. In no case shall a person committed to a secure facility for mental health treatment pursuant to this article be placed at Metropolitan State Hospital or Napa State Hospital.

(b) A permanent facility for the housing and treatment of persons committed pursuant to this article shall be located on a site or sites determined by the Director of Corrections and the Director of Mental Health, with approval by the Legislature through a trailer bill or other legislation. The State Department of Mental Health shall be responsible for operation of the facility, including the provision of treatment. In no event shall any persons other than those placed pursuant to this article be housed or treated at a facility established pursuant to this subdivision unless expressly authorized by the Legislature.

SEC. 3. Section 6601 of the Welfare and Institutions Code is amended to read:

6601. (a) Whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director 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 director 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.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms 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 Mental Health in consultation with the Department of Corrections. 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 shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by

the State Department of Mental Health, 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 Mental Health. 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 Mental Health 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 Mental Health 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) Any independent professional who is designated by the Director of Corrections or the Director of Mental Health 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) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article 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

petition for commitment in the superior court.

(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. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall not toll, discharge, or otherwise affect the term of parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

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

SEC. 4. Section 6602 of the Welfare and Institutions Code is amended to read:

6602. (a) 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 there 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.

(b) The court shall notify the State Department of Mental Health of the outcome of the probable cause hearing by forwarding to the department a copy of the minute order of the court within 15 days of the decision.

SEC. 5. Section 6602.5 of the Welfare and Institutions Code, as added by Section 4 of Chapter 19 of the Statutes of 1998, is amended to read:

6602.5. (a) No person may be placed in a state hospital pursuant to 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.

(b) 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 state 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.

(c) In no event shall the number of persons referred pursuant to subdivision (b) to the superior court of any county exceed 10 in any 30-day period, except upon agreement of the presiding judge of the superior court, the district attorney, the public defender, the sheriff, and the Director of Mental Health.

(d) This section shall be implemented in Los Angeles County pursuant to a letter of agreement between the Department of Mental Health, the Los Angeles County district attorney, the Los Angeles County public defender, the Los Angeles County sheriff, and the Los Angeles County superior court. The number of persons referred to the superior court of Los Angeles County pursuant to subdivision (b) shall be governed by the letter of agreement.

SEC. 6. Section 6603 of the Welfare and Institutions Code is amended to read:

6603. (a) A person subject to this article shall be entitled to a trial by jury, the assistance of counsel, the right to retain experts or professional persons to perform an examination on his or her behalf, and have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, 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.

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

(c) If no demand is made by the person subject to this article or the petitioning attorney, the trial shall be before the court without jury.

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

(e) The court shall notify the State Department of Mental Health 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.

SEC. 7. Section 6604.1 of the Welfare and Institutions Code, as added by

Section 5 of Chapter 19 of the Statutes of 1998, is amended 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 become inoperative on July 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute that is enacted before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. 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. For subsequent extended commitments, the term of commitment shall be from the date of the termination of the previous commitment.

(b) This section shall become operative on July 1, 2001.

SEC. 9. Section 6609.1 of the Welfare and Institutions Code is amended to read:

6609.1. (a) When the State Department of Mental Health makes 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, the district attorney, or the county's designated counsel, that have jurisdiction over the following locations:

(1) The community in which the person may be released for community outpatient treatment.

(2) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(3) The county which filed for the person's civil commitment pursuant to this article. The department shall also notify the Department of Corrections Sexually Violent Predator Parole Coordinator, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

The notice shall be given at least 15 days prior to the department's

submission of its recommendation to the court.

(b) When the State Department of Mental Health makes a recommendation to pursue recommitment, a recommendation not to pursue recommitment, or seeks a judicial review of commitment status pursuant to subdivision (f) of Section 6605, of any person committed as a sexually violent predator, it shall provide written notice of that action to the sheriff or chief of police, or both, and to the district attorney, that have jurisdiction over the following locations:

(1) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(2) The probable community in which the person will be released, if recommending not to pursue recommitment.

(3) The county which filed for the person's civil commitment pursuant to this article.

The State Department of Mental Health shall also notify the Department of Corrections' Sexually Violent Predator Parole Coordinator, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of the Penal Code. The notice shall be made at least 15 days prior to the department's submission of its recommendation to the court. 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 release of a sexually violent predator, the court shall notify the Department of Corrections Sexually Violent Predator Parole Coordinator. The Department of Corrections shall notify the State Department of Mental Health, the sheriff or chief of police, or both, and the district attorney, that have jurisdiction over the following locations:

(1) The community in which the person is to be released.

(2) The community in which the person maintained his or her last legal residence as defined in Section 3003 of the Penal Code.

The Department of Corrections shall make the above notifications regardless of whether the person released will be serving a term of parole after release by the court.

(d) If the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 300) of Chapter 8 of Title 1 of Part 3 of the Penal Code, to allow adequate time for the Department of Corrections to make appropriate parole arrangements upon release of the person, the person shall remain in physical custody for a period not to exceed 72 hours or until parole arrangements are made by the Department of Corrections' Sexually Violent Predator Parole Coordinator, whichever is sooner. To facilitate timely parole arrangements, notification to the Department of Corrections' Sexually Violent Predator Parole Coordinator of the pending release shall be made by telephone

or facsimile and, to the extent possible, notice of the possible release shall be made in advance of the proceeding or decision determining whether to release the person.

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

(f) 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.

(g) The provisions of this section are severable. If any that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 10. 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 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. 11. Section 6609.3 of the Welfare and Institutions Code is amended to read:

6609.3. (a) At the time a notice is sent pursuant to subdivisions (a) and (b) of Section 6609.1, the sheriff, chief of police, or district attorney notified of the release 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 release, recommendation regarding recommitment, or review of commitment status pursuant to subdivision (f) of Section 6605. 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 county of residence of a witness, victim, or family member of a victim who has requested notice, or (2) within 100 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 date or the community in which the person is to reside, the sheriff, chief of police, or the district attorney shall provide the witness, victim, or next of kin with the revised information.

(b) At the time a notice is sent pursuant to subdivision (c) of Section 6609.1 the Department of Corrections 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 has been released.

(c) 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.

SEC. 12. No reimbursement is required by Section 1 of this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 13. 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.