

# SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**COPY**

THE PEOPLE,	)	S - 182355
	)	
Petitioner,	)	
	)	B219011
v.	)	
	)	(Los Angeles County
SUPERIOR COURT OF	)	Super. Ct. No. ZM014203)
LOS ANGELES COUNTY,	)	
	)	
Respondent,	)	
	)	
CHRISTOPHER SHARKEY,	)	
	)	
Real Party in Interest.	)	

SUPREME COURT  
**FILED**

JUL 19 2010

Frederick K. Ohlrich Clerk

Deputy

**MOTION FOR JUDICIAL NOTICE  
IN SUPPORT OF REAL PARTY IN INTEREST'S  
OPENING BRIEF ON THE MERITS; PROPOSED ORDER**

MICHAEL P. JUDGE, PUBLIC DEFENDER  
OF LOS ANGELES COUNTY, CALIFORNIA

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Attorneys for Real Party in Interest

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Respondent,	)	
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CHRISTOPHER SHARKEY,	)	
	)	
Real Party in Interest.	)	

---

**MOTION FOR JUDICIAL NOTICE  
IN SUPPORT OF REAL PARTY IN INTEREST'S  
OPENING BRIEF ON THE MERITS; PROPOSED ORDER**

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Real party in interest, Christopher Sharkey, hereinafter "real party," and through his attorney Michael P. Judge, Public Defender of Los Angeles County, hereby requests this court to take judicial notice of the legislative history surrounding the enactment Welfare and Institutions Codes section 6601.3 as they relate to the facts and argument set forth in real party's Opening Brief on the Merits.

Specifically, real party requests this court take judicial notice of the

following exhibits pertaining to the enactment of Welfare and Institutions Code section 6601.3:

Exhibit "A": Enrolled Bill Report, Department of Corrections, January 25, 1996

Exhibit "B": Assembly Committee on Public Safety Analysis, July 8, 1997

Exhibit "C": Department of Finance Bill Analysis, August 20, 1997

Exhibit "D": Assembly Committee on Appropriations Analysis,, August 27, 1997

Exhibit "E": Enrolled Bill Report, Department of Corrections, April 8, 1998

Exhibit "F": Assembly Committee on Appropriations Analysis,, April 12, 2000

Exhibit "G": Enrolled Bill Report, Department of Corrections, June 12, 14, 2000

The documents submitted for judicial notice, Exhibits A through G, are relevant to the resolution of the above-entitled case because Welfare and Institutions Code section 6601.3 does not define its use of the term "good cause" (People v. Superior Court (Sharkey) (2010) 107 Cal.Rptr.3rd 201, 209, Rev. Gtd. June 17, 2010, Case No. S182355), therefore resort the rules of statutory construction are necessary. (Ca. Rules of Court, Rule 8.252, subd. (2)(A).) "When the statutory language is ambiguous, the court may examine the context in which the language appears, adopting the construction that best harmonizes the statute internally and with related statutes. When the language is susceptible of more than one reasonable interpretation. . . , we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous

administrative construction, and the statutory scheme of which the statute is a part.” (People v. Jefferson (1999) 21 Cal.4th 86, 94, citations and internal quotations omitted.)

These matters were not presented to the trial court and do not relate to proceedings occurring after the order or judgment that is the subject of appeal. (Ca. Rules of Court, Rule 8.252, subs. (2)(B) & (C).)

**MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE**

The California Evidence Code and the California Rules of Court allows California courts to take judicial notice of appropriate matters. (Evid. Code § 450 et seq.) This authority extends to appellate courts as well as to trial courts. (Evid. Code § 459, subd. (a); Ca. Rules of Court, Rules 8.252 and 8.524, subdivision (g).)

Evidence Code section 451 provides that “[j]udicial notice shall be taken of the following: (a) The decisional, constitutional, and public statutory law of this state and of the United States. . . .” Evidence Code section 452 provides that “[j]udicial notice may be taken of the following matters to the extent that they are not embraced within Section 451: (a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state.” Legislative histories and statutory amendments are subject to judicial notice. (Hughes Electronic Corp. v. Citibank Delaware (2004) 120 Cal.App.4th 251, 266, fn. 13.)

Evidence Code section 452, subdivision (h), permits the court to take judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Evidence Code section 453

requires the court to take judicial notice of any matter included in Evidence Code section 452 at the request of a party to an action if that party gives the opposing party sufficient opportunity to respond.

THEREFORE, real party respectfully requests this court to take judicial notice of Exhibits A through G attached hereto.

Respectfully submitted,

MICHAEL P. JUDGE, PUBLIC DEFENDER  
OF LOS ANGELES COUNTY, CALIFORNIA

Albert J. Menaster,  
Karen King,  
Jack T. Weedin,

Deputy Public Defenders

By: 

JACK T. WEEDIN  
(State Bar No. 73086)  
Deputy Public Defender

Attorneys for Real Party in Interest

[PROPOSED] ORDER

Good cause appearing therefore,

IT IS HEREBY ORDERED that the Supreme Court will take judicial notice of the following documents:

Exhibit "A": Enrolled Bill Report, Department of Corrections, January 25, 1996

Exhibit "B": Assembly Committee on Public Safety Analysis,, July 8, 1997

Exhibit "C": Department of Finance Bill Analysis, August 20, 1997

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Exhibit "F": Assembly Committee on Appropriations Analysis,, April 12, 2000

Exhibit "G": Enrolled Bill Report, Department of Corrections, June 12, 14, 2000

Dated: \_\_\_\_\_, 2010

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Justice, California Supreme Court

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June 12, 14, 2000



Exhibit "A"

Enrolled Bill Report  
Department of Corrections

January 25, 1996

**ENROLLED BILL REPORT**

STATE OF CALIFORNIA

<small>AGENCY</small> <b>YOUTH AND ADULT CORRECTIONAL AGENCY</b>	<small>BILL NUMBER</small> <b>AB 1496</b>
<small>DEPARTMENT, BOARD OR COMMISSION</small> <b>CORRECTIONS</b>	<small>AUTHOR</small> <b>SHER</b>

**SUMMARY**

Would provide clean-up language for the new sexually violent predator (SVP) law as established by AB 888 (Rogan).

**HISTORY, SPONSORSHIP, AND RELATED BILLS**

This bill is sponsored by the Administration in an attempt to provide various cleanup provisions to the sexual predator law (AB 888, Rogan), which was signed by the Governor in 1995.

**IMPACT ANALYSIS**

Existing law provides that whenever the Director of Corrections determines that an individual who is under the jurisdiction of the Department of Corrections (CDC) and may be a sexually violent predator, the Director, at least six months prior to that individual's scheduled release date from prison or termination of parole, shall refer the person for evaluation by the Department of Mental Health (DMH). "Sexually violent predator" is defined as 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.

Existing law also provides a process for DMH to refer a person believed to be a "sexually violent predator" to the court for a jury determination. If the person is found to be a "sexually violent predator" the person shall be retained and treated for a period of up to two years. The person shall be under the jurisdiction of DMH and housed in an institution under the jurisdiction of CDC.



The purpose of this bill is as follows:

Section 6601(h):

The language "in the superior court" has been added to bring that subdivision into explicit conformity with the forum designated for filing of petitions for commitment in Section 6601(i).

**RECOMMENDATION**

**SIGN THE BILL**

<small>LEGISLATIVE COUNSEL</small> 	<small>DATE</small> 1-25-96	<small>ASSISTANT ATTORNEY GENERAL</small> 	<small>DATE</small> 1/25/96
---	--------------------------------	---	--------------------------------

This section places the parole hold procedure adopted as regulation by the Board of Prison Terms into the body of the statutory scheme. It allows for a 45-day hold on an inmate or parolee who has been referred for evaluation to DMH, or upon whom a petition for commitment has been filed in superior court, for whom a probable cause hearing is pending in instances where the inmate/parolee would otherwise be released from custody in less than 45 days. These instances have arisen, and will continue to do so, for two reasons.

First, in the initial year of the SVP law's operation the referral process is in a status where it is not possible to identify all eligible inmates and have them processed through a probable cause determination prior to their release date. This is a necessary consequence of the Act's waiver, during that first year, of the requirement CDC make such referrals at least 6 months prior to an inmate's release.

Second, there will always be inmates whose release dates are advanced through judicial or administrative action so as to collapse the 6 month lead time, either before the process of referral has begun or before a probable cause determination can be made. The new regulation, based on apparent legislative intent that referrals not be released prior to a probable cause determination, where a petition has been filed, serves this purpose, and is by this amendment explicitly included in the SVP law.

Section 6601.5

This amendment also addresses the case of inmates/parolees who, due to the factors outlined in Section 6601.3, would be released from custody prior to the time a formal probable cause hearing could be held. It provides for a preliminary determination of probable cause, based on review of the contents of the petition by the Superior Court, attended by a right to a speedy hearing on the issue of probable cause.

Section 6602

This amendment clarifies that any person against whom a petition has been filed maintains his/her status regarding parole, and is subject to all provisions and conditions regardless of any commitment proceedings. In addition, it clarifies the authority of the court to bind a petitioner when it has found probable cause to believe he or she is a sexually violent predator and would constitute a danger to society if released. Further, it provides that in addition to an institution, this person could additionally be held at any secure facility pending completion of commitment procedures. Given the nature of the finding precedent to such a confinement being imposed, this is deemed declarative of legislative intent.

AB 14956 (Sher)

Page 3

FISCAL IMPACT

Unknown at this time.

ARGUMENTS PRO AND CON

Pro: This clean-up bill will further in the intent of the SVP law by providing further clarification to several of the bill's provision.

Con: Unknown at this time.

RECOMMENDATION

Sign the bill.

Exhibit "B"

Assembly Committee on Public  
Safety Analysis

July 8, 1997

Date of Hearing: July 8, 1997  
Chief Counsel: Judith M. Garvey

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Robert M. Hertzberg, Chair

SB 536 (Mountjoy) - As Proposed to be Amended in Committee

SUMMARY: Specifies the two-year civil commitment period for sexually violent predators (SVP) must not be reduced by any time spent in custody prior to the order of commitment, nor shall any credits be applicable to reduce the two-year period. Requires the Department of Mental Health (DMH) to notify local law enforcement officials 15 days prior to a court recommendation for community out-patient treatment or unconditional release of a SVP. Specifically, this bill:

- 1) Requires the DMH to notify local law enforcement officials 15 days prior to the submission to a court of its recommendation for community outpatient treatment for any person committed as a SVP predator or its recommendation not to pursue re-commitment of the person.
- 2) Provides that no person may be placed in a state hospital pursuant to provisions of civil commitment statute until there has been a determination, as specified, that there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior.
- 3) Specifies that the two-year period of commitment shall commence on the date upon which the court issues the order of the commitment.
- 4) Specifies the two-year period shall not be reduced by any time spent in custody prior to the order of commitment, nor shall any credits be applicable to reduce the two-year period.
- 5) Continues in effect provisions added by AB 1496 (Sher), Chapter 4, Statutes of 1966, to permit the Board of Prison Terms (BPT) to order a person who has been referred to the DMH for evaluation to remain in custody for no more than 45 days for evaluation in those circumstances when the restoration of credits to the person's term of imprisonment renders the normal time frames for SVP commitment impracticable.

EXISTING LAW provides:

- 1) Effective January 1, 1996, a new judicial commitment for individuals to be known as "SVPs" was created. A "SVP" is defined as a person who has been convicted of a sexually violent offense, as specified, against two or more victims for which he or she received a determinate sentence. A SVP must have a diagnosable 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. (Welfare and Institutions Code (WIC) Sections 6600-6608.)
- 2) SVP commitments may be sought only for prisoners under sentence to the California Department of Corrections (CDC) or whose parole has been revoked. At least six months before the release of a person under its

jurisdiction, the CDC must refer him or her for screening by the CDC and the BPT. If it is found by the CDC and BPT that the prisoner is likely to be a SVP, he or she is referred for a "full evaluation" by the DMH. A standardized assessment protocol is used. If the two mental health professionals agree that the prisoner is a SVP, the DMH must forward a request for the filing of a petition for commitment to the district attorney or county counsel.

- 3) After a petition for SVP commitment is filed, a superior court judge conducts a probable cause hearing at which the prisoner is represented by an attorney. If probable cause is found that the person is a SVP, the judge orders a trial to be heard on that issue; otherwise, the petition must be dismissed.
- 4) If found to meet specified criteria, the SVP is committed by the court to the custody of the DMH for a two-year term. The commitment is for appropriate treatment and confinement, but must be at a secure facility on the grounds of an institution under the jurisdiction of the CDC. Subsequent commitments may be sought for as long as the SVP criteria are met. Potentially, the commitments may be for so long as the person lives.
- 5) A person committed as an SVP has the right to an annual review of his or her mental condition, including the assistance of a qualified expert. After a minimum of one year of confinement, a person found to be a SVP may be placed in a conditional release program. A hearing on this issue may be occasioned by a report to the court by the DMH or by a petition by the person committed.
- 6) If the court finds that the person is not a danger to others due to his or her diagnosed mental disorder, if under supervision and treatment in the community, the court must order him or her placed in a forensic conditional release program operated by the state for one year. Before a person is actually placed on conditional release, the local community program director must recommend a particular program to the court. Time spent in a conditional release program does not count toward the term of commitment as an SVP unless the person is confined in a locked facility.
- 7) Requires the DMH to notify local law enforcement officials 15 days prior to the scheduled release of a sexually violent predator.

COMMENTS:

- 1) Author's Statement. According to the author, "Existing law states that, in cases where a superior court makes a ruling that a SVP can be unconditionally released, the DMH is required to notify the sheriff or chief of police, or both, as well as the district attorney who has jurisdiction over the community to which the person will be released, at least 15 days prior to the release. However, when the court makes such a determination neither DMH nor any other agency has the authority to place or direct the unconditionally released individual to a specific community. Therefore, there is no method of determining who should be notified of the unconditional release.

"This provision mirrors one which was enacted to set forth the notification duties of the BPT and the Department of Corrections when convicted criminals who committed violent felonies are being release on

parole. However, WIC Section 6600 provides for a civil commitment for individuals who, in all likelihood, will not have any residual parole obligation. Unlike parolees, a person being released from a civil commitment has no special obligations, unless, because of the nature of a prior conviction, he or she must register with local authorities as a sex offender.

"As a practical matter, it is much more likely that the SVP will be out of the hospital and at court attending the proceedings resulting in unconditional release. In that situation, it is predictable that the court would order the individual unconditionally released forthwith from the custody of the county sheriff. In such instances, there would be no communication from the court to the hospital. And the hospital, as an entity of DMH, would be in no position to provide the 15 to 45 day notice as required by the statute to any county authority.

"The intent of this bill is to strengthen the law enforcement and victim notification procedures consistent with the new SVP civil commitment process. The bill would provide for notification procedures, prior to DMH's recommendation to the court on a SVP action, regardless of whether the SVP may ultimately be conditionally or unconditionally released by the courts."

- 2) Need for Clean-up Legislation. AB 3130 (Boland), Chapter 462, Statutes of 1996, provided for notification when a SVP was to be released. The provisions were copied from existing law relating to violent inmates who were being released to parole. This bill is intended to more closely tailor the notification process to the distinctly different situation posed by conditional and unconditional releases after a civil commitment.
- 3) Evaluation. As proposed to be amended, this bill continues in effect provisions added by AB 1496 to permit the BPT to order a person who has been referred to the DMH for evaluation to remain in custody for no more than 45 days for evaluation in those circumstances when the restoration of credits to the person's term of imprisonment renders the normal time frames for SVP commitment impracticable. (See proposed amendments to WIC Section 6601.3.)
- 4) Judicial Review. As proposed to be amended, this bill adds a provision that no person may be placed in a state hospital pursuant to provisions of civil commitment statute until there has been a determination, as specified, that there is probable cause to believe that the individual named in the petition is likely to engage in SVP criminal behavior.

According to the sponsor, this language addresses the inappropriateness of placing persons in a state mental hospital without some judicial review. From their experience so far, close to 25% of persons for whom a petition has been filed are released by virtue of a court finding that probable cause does not exist. In addition, the courts have long recognized that some sort of due process review is called for when transferring a person to a mental hospital, even though the person may have already been in custody for other reasons. See Vitek v. Jones (1980) 445 U.S. 480. (See proposed amendments to WIC Section 6602.5.)

- 5) Credits. This bill, as proposed to be amended, specifies that the two-year period of commitment shall commence on the date upon which the court issues the order of the commitment. It also specifies the two-year



period shall not be reduced by any time spent in custody prior to the order of commitment, nor shall any credits be applicable to reduce the two-year period.

According to the sponsor, this amendment clarifies that since the SVP statute is a civil commitment, criminal concepts are not applicable. Some superior courts have apparently been granting credits against the two-year term of commitment. All other mental health, civil commitments involve a commitment for a set period of time, commencing upon the issuance of the court commitment order, without deduction of credits.

The sponsor plans to amend to add legislative intent language in Section 7 of the bill. The sponsor states that this is needed to reiterate that the SVP commitment is civil and that the language in the first paragraph of this section for WIC Section 6604 is declaratory of existing law. (See proposed amendments to WIC Section 6604.)

- 6) Notice. The bill in print contains amendments that are technical, conforming amendments to make the notice provisions consistent with the procedures for release and the fact that the court retains control over the timing of release, not the DMH.
- 7) Urgency. The author wishes to add an urgency clause to this bill. It is unknown whether the urgency clause will be obtained from the Rules Committee prior to this bill being heard in Committee.
- 8) Prior Legislation.
  - a) AB 3130 (Boland), Chapter 462, Statutes of 1996.
  - b) AB 1496 (Sher), Chapter 4, Statutes of 1996.
  - c) AB 888 (Rogan), Chapter 763, Statutes of 1995.
  - d) SB 1143 (Mountjoy), Chapter 764, Statutes of 1995.
- 9) Opposition. The California Attorneys for Criminal Justice believe that current law provides adequate notice to law enforcement and adequate protection of the public. Moreover, this bill will impose additional administrative burdens on the DMH.

10) Sex Offender Commitment Program (SOCP) Cases as of June 30, 1997.

REFERRED TO DMH (1,355)

DMH Record Review Does Not Meet Criteria 309	DMH Record Review Meets Criteria 967	DMH Record Review Pending 79
Clinical Evaluation Negative 467	Clinical Evaluation Positive 402	Clinical Evaluation Pending 98
	Referred to DA 395	
	Decision Made by DA 339	DA Decision Pending 56
Rejected By DA 76	Petition Filed by DA 263	
	Ruling Made by Judge 112	Probable Cause Pending 151
Probable Cause Not Found 27	Probable Cause Found 85	
Released 5	Committed to Treatment Program 34	Trials Pending 46

Seven cases with positive clinical evaluations were not referred to the district attorney for various reasons (e.g., psychological attention, BPT good cause not found).

REGISTERED SUPPORT/OPPOSITION:

Support

Attorney General's Office  
Department of Mental Health (sponsor)  
Santa Barbara County

Opposition

California Attorneys for Criminal Justice

Analysis prepared by: Judith M. Garvey / apubs / (916) 445-3268

Exhibit "C"

Department of Finance Bill  
Analysis

August 20, 1997

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: August 11, 1997  
POSITION: Support  
SPONSOR: Department of Mental Health

BILL NUMBER: SB 536  
AUTHOR: R. Mountjoy

BILL SUMMARY

This bill would eliminate the requirement that the Department of Mental Health (DMH) notify local law enforcement agencies 15 days prior to the unconditional release of a Sexually Violent Predator (SVP). This bill instead would require DMH to notify local law enforcement agencies 15 days prior to forwarding a recommendation to the court that an SVP be placed on community outpatient treatment or not to pursue recommitment of an SVP.

This bill would remove sunset clauses thus allowing the Board of Prison Terms to continue to hold potential SVPs for evaluation, probable cause, etc., beyond the date the individual would have been released on parole. This bill would specify that no person suspected of being an SVP be placed in the state hospital until a probable cause hearing has occurred. This bill further specifies that SVPs be placed on a two-year commitment that is not reduced by prior time in custody nor by credit. Effective January 1, 1999, time spent in custody while awaiting disposition of civil commitment proceedings shall count as part of the two year period of commitment.

FISCAL SUMMARY

No additional state costs would result from enactment of this bill.

COMMENTS

Chapter 462, Statutes of 1996 (AB 3130), requires DMH to notify local law enforcement agencies 15 days prior to the unconditional release of an SVP civil commitment. When the court rules for the unconditional release of an SVP, neither DMH or any other agency has authority to place or direct the individual to a specific community; therefore, there is no method of determining who should be notified of the unconditional release. This bill would eliminate the requirement that DMH notify local law enforcement agencies 15 days prior to the unconditional release of an SVP.

This bill would require DMH to notify local law enforcement agencies 15 days prior to forwarding a recommendation to the court that an SVP be placed on community outpatient treatment or not to pursue recommitment of an SVP. This would allow community notification prior to the release of an SVP on conditional or unconditional release.

Analyst/Principal (0522) N. Martinez <i>Nona Martinez</i>	Date 8/20/97	Program Budget Manager Stan Cubanski <i>John Glynn</i>	Date 8/20/97
Department Deputy Director			Date

Governor's Office:	By:	Date:	Position Noted _____
			Position Approved _____
			Position Disapproved _____

BILL ANALYSIS

Form DE-43 (Rev 03/95 Buff)

R. Mountjoy

August 11, 1997

SB 536

Under current law, if an individual is suspected of being an SVP and is about to be released or granted parole, the Board of Prison Terms (BPT) has the authority to require the individual to be held in a state hospital for 45 days for evaluation. This section is due to sunset on January 1, 1998.

This bill would eliminate the sunset. Most referrals for evaluation will be made months prior to release or parole, however, there will be instances where release dates are modified by judicial or administrative actions. If the individual is suspected of being an SVP, continuation of this language allows for the individual to be held, if necessary, beyond their release date for the completion of the evaluation.

Currently, when an individual is referred to a state hospital for evaluation and is determined to be an SVP, the individual is to remain in a secure facility, which could be either a local or state facility, through the remainder of the commitment process (filing for hearing by the county attorney, a probable cause hearing at the county court, and trial). This bill would specify that no person may be placed in a state hospital until the probable cause hearing at the county court has been held.

Additionally, this bill would require that, until January 1, 1999, all commitments for SVPs would be for two years and that the time would not be reduced by credits or for time served in the state hospital awaiting commitment. This is necessary to ensure that the time served allows for appropriate treatment. After January 1, 1999, time spent in custody awaiting the court's commitment order shall count towards the two-year commitment. The constitutionality of California's SVP law should be resolved by this date, therefore the period of time in custody prior to the issuance of the court commitment order should be substantially reduced, allowing sufficient time to provide appropriate treatment.

### SUMMARY OF CHANGES

Amendments to this bill since our analysis of the March 31, 1997 version include the following significant amendments which do change our position:

This bill would remove sunset clauses thus allowing the Board of Prison Terms to continue to hold potential SVPs for evaluation, probable cause, etc., beyond the date the individual would have been released on parole.

This bill would specify that no person suspected of being an SVP be placed in the state hospital until a probable cause hearing has occurred.

This bill would specify that SVPs be committed for two years and that the time not be reduced for credits or for prior time in custody.

Effective January 1, 1999, this bill would allow time spent in custody awaiting the commitment order to count as time served towards the two year civil commitment.

**BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**

**Form DF-43**

**AUTHOR**

**AMENDMENT DATE**

**BILL NUMBER**

R. Mountjoy

August 11, 1997

SB 536

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)						Fund Code	
	LA	(Dollars in Thousands)							
	CO	PROP	FC	1997-1998	FC	1998-1999	FC	1999-2000	
4440/Mental Hth	SO	No	----- No/Minor Fiscal Impact -----						0001

Exhibit "D"

Assembly Committee on  
Appropriations Analysis

August 27, 1997

Date of Hearing: August 27, 1997

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Carole Migden, Chairwoman

SB 536 (Mountjoy) - As Amended: August 11, 1997

Policy Committee: Public Safety

Vote: 7-1

Urgency: No

State Mandated Local Program: No

Reimbursable:

SUMMARY

This bill:

- 1) Prohibits the two-year civil commitment period for sexually violent predators (SVP) from being reduced by any time spent in custody prior to the order of commitment, nor shall any sentence credits reduce the two-year period.
- 2) Requires the Department of Mental Health (DMH) to notify local law enforcement officials 15 days prior to a court recommendation for community out-patient treatment or unconditional release of a SVP.
- 3) Prohibits a person from being placed in a state hospital pursuant to provisions of civil commitment until there has been a determination of probable cause to believe the individual is likely to engage in sexually violent predatory criminal behavior.
- 4) Continues in effect provisions added by AB 1496 (Sher, Ch 4, 1966) to permit the Board of Prison Terms (BPT) to order a person who has been referred to the DMH for evaluation to remain in custody for no more than 45 days when restoration of sentence credits renders the normal time frames SVP commitment unworkable.

FISCAL EFFECT

Minor absorbable costs to the DMH.

BACKGROUND

- 1) This bill requires the two-year period of commitment to begin on the date the court issues the commitment order. It prohibits the two-year period from being reduced by time spent in custody prior to the civil commitment, nor shall credits be applicable to reduce the two-year period.
- 2) Opposition. CA Attorneys for Criminal Justice contend it is inappropriate to not count time spent in jail pending SVP status determination.

"The unfairness of this provision is readily apparent. Persons being considered for commitment as sexually violent predators can be held

- continued -



after their original sentence is over, and before the trial on their commitment, and yet the time they spent incarcerated under these provisions would not count against their total time of commitment.

"Those being held pending an SVP hearing are being held against their will, and the time so spent should be credited against the total time of commitment. In addition to lengthening the time of commitment for offenders who are eventually found to be SVPs, this provision gives those prosecuting these cases little incentive to see that the evaluation and hearing are expeditiously concluded."

According to the sponsor, this provision clarifies that since the SVP statute is a civil commitment, criminal concepts are not applicable. Some superior courts have apparently been granting credits against the two-year term of commitment. All other mental health, civil commitments involve a commitment for a set period of time, commencing upon the issuance of the court commitment order, without deduction of credits.

Suggested amendment: Provide that no SVP shall receive sentence credits, but that time served pending SVP determination shall be included in the two-year commitment. (Only one section 6604 would then be necessary, with no sunset.)

- 3) Author's amendments propose an urgency clause.
- 4) Need. AB 3130 (Boland, Ch 462, 1996), provided for notification when a SVP was to be released. The provisions were copied from existing law relating to violent inmates who were being released to parole. This bill is intended to more closely tailor the notification process to the distinctly different situation posed by conditional and unconditional releases after a civil commitment.

Exhibit "E"

Enrolled Bill Report  
Department of Corrections

April 8, 1998

**ENROLLED BILL REPORT**

STATE OF CALIFORNIA

AGENCY <b>YOUTH AND ADULT CORRECTIONAL AGENCY</b>	BILL NUMBER <b>SB 536</b>
DEPARTMENT, BOARD OR COMMISSION <b>CORRECTIONS</b>	AUTHOR <b>Mountjoy</b>

SUMMARY

Senate Bill 536 would make various clarifications to the Welfare and Institutions (W&I) Code relating to Sexually Violent Predators (SVP) and would reestablish two provisions which sunset on January 1, 1998.

HISTORY, SPONSORSHIP and RELATED BILLS

This bill is sponsored by the Department of Mental Health (DMH).

This bill received the following "No" votes: Assemblyman Perata in the Assembly Public Safety Committee, and Assemblymember Migden on the Assembly Floor.

SB 1976 (Mountjoy), also sponsored by DMH, is the current year clean-up bill for the SVP statute.

IMPACT ANALYSIS

Operation of the system designed to identify, civilly commit and provide treatment to persons that meet the criteria as SVPs is a joint effort between county district attorneys and three state agencies: the California Department of Corrections (CDC), the Board of Prison Terms (BPT) and DMH. CDC's primary responsibility is to review the case histories of persons sentenced to prison by the courts, and parole violators returned to custody, to identify if they meet the statutory requirements for referral to DMH for evaluation as potential SVPs. It is important to identify these persons early in their incarceration in order for the DMH evaluation to be completed by the time the person would otherwise parole from prison, at which time they can be turned over to county jurisdiction for the civil commitment trial. Many persons, especially parole violators, serve a very short time in prison (often 6 months or less). It is difficult to complete the identification process and DMH evaluation by the time they would be released to serve parole.

SB 536 would reestablish W&I Code Section 6601.3 allowing BPT to place a hold from release to parole on these persons for up to 45 days in order for DMH to complete their evaluation. If DMH recommends their commitment as an SVP, they will be turned over to county jurisdiction for the civil commitment trial. If DMH does not recommend for the person's commitment as an SVP, the person will be released into CDC's parole custody. This bill would also reestablish W&I Code Section 6601.5 which allows the district attorney bringing the SVP petition before a superior court to request an urgency

RECOMMENDATION

**SIGN THE BILL**

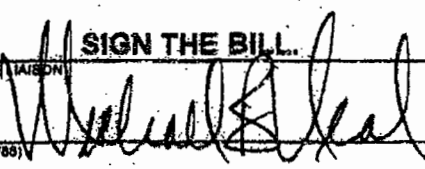
LEGISLATIVE LIAISON

DATE

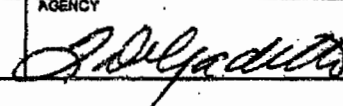
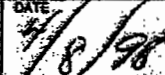
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CDC 653 B (9/88)



4/8/98

review in cases where the BPT's hold will expire prior to the formal probable cause hearing by the court. Both of these hold provisions had originally sunseted on January 1, 1998. They provide critical public safety tools to maintain custody of persons while the SVP commitment process is proceeding.

It is important to note that while the language of Section 6601.5 is identical to its previous version, it speaks to cases where an inmate's parole, or temporary parole hold pursuant to Section 6601.3 will expire. More accurately, the hold is needed when an inmate's prison term, return to custody, or temporary hold pursuant to Section 6601.3 is set to expire. Obviously, the section was operable as originally written, but CDC will consult with DMH regarding potential clean-up language for this section.

This bill would also provide clarification on critical issues regarding the length of the civil commitment. SB 536 establishes that the two year term of the civil commitment commences on the date of the court's commitment order, and any subsequent commitment terms commence on the expiration date of the previous commitment term. Additionally, in keeping with the civil nature of the commitment, no time credits are accrued by persons for time spent in a secure facility prior to the order of commitment. It is important to note that these provisions will sunset on January 1, 1999. This bill would also establish that no persons may be placed in a state hospital pursuant to the SVP provisions of the W&I Code until there is probable cause to believe the person is likely to engage in SVP criminal behavior. This helps to end the practice of certain superior courts to send persons to DMH on an indefinite basis prior to the court's probable cause hearing. These provisions clarify or streamline portions of the SVP law which are not under CDC's jurisdiction.

SB 536 would also amend provisions relating to providing specified entities and persons with notice of the potential release of persons serving SVP civil commitments. This bill would provide that when DMH is making a recommendation to the court for community outpatient treatment, DMH is required to provide notice to the sheriff, chief of police and district attorney (hereinafter referred to as local law enforcement agencies) for the community where the outpatient treatment is located. This bill would also provide that when DMH is making a recommendation not to pursue recommitment of a person currently serving an SVP civil commitment, DMH is required to provide notice to local law enforcement agencies for the community in which the civil commitment was established. Additionally, this bill would provide that when a court orders the immediate release of a person committed as an SVP, DMH is required to provide notice to local law enforcement agencies for the community in which the person is to be released. These notices are required to be made at least 15 days prior to the date on which the notification is to be forwarded by DMH to the court, except in cases where the court orders the immediate release of the person. The local law enforcement agencies are also required to provide notice to any victims, witnesses or next of kin who have requested such notice.

CDC has been concerned that the public safety concerns protected by provisions of the Penal Code regarding the release of felons from prison should also be protected in the case of the release of SVPs from DMH or court custody. As written, SB 536 does

not address these concerns. A few of the amendments which are needed to address these concerns are:

- Notice should also be provided in all circumstances to the CDC if the person has a period of parole remaining to serve. SVPs who are conditionally or unconditionally released from an SVP civil commitment within three years since their incarceration with CDC may have a period of parole left to serve upon their release into the community by DMH. Notification to CDC is necessary to ensure that the proper level of parole supervision is available once this person enters the community.
- Notice should also be provided in all cases to the local law enforcement agencies in the community in which the civil commitment was established, and also to the local law enforcement agencies in the county of last legal residence except in cases where a conditional release to an alternate county is being recommended. Also, in the county of last legal residence is important because the person may be returned to that community if they have parole time left to serve.
- Notice needs to also be provided when DMH is recommending recommitment of an SVP, because the court may deny the petition and the person may be immediately released without previous community notification.

CDC is also concerned that while victims, witnesses and next of kin are aware that upon their request CDC will provide notification to them of the potential release of a violent felon, these persons may not be aware that they must send a separate request to local law enforcement agencies regarding persons committed as SVPs. CDC is working with DMH to resolve these concerns and expect to utilize SB 1976 (Mountjoy) as a vehicle for these amendments.

#### FISCAL IMPACT

This bill would not create any fiscal impact upon CDC.

#### ARGUMENTS PRO AND CON

Pro: SB 536 would reestablish provisions enabling BPT or county superior courts to hold under custody a person who is being evaluated as an SVP, and would clarify that time spent in a secure facility prior to the court's civil commitment does not reduce the two-year term of the commitment.

Con: SB 536 does not comprehensively address the need to provide appropriate notifications to local law enforcement agencies and other specified persons regarding the possible release of an SVP.

#### RECOMMENDATION

Sign the bill.

Exhibit "F"

Assembly Committee on  
Appropriations Analysis

April 12, 2000

Date of Hearing: April 12, 2000

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Carole Migden, Chairwoman

SB 451 (Schiff) -- As Proposed to be Amended: April 12, 2000

Policy Committee: Public Safety

Vote: 5-0

Urgency: Yes State Mandated Local Program: No

Reimbursable:

SUMMARY

This bill clarifies that:

- 1) A sexually violent predator (SVP) may be held in custody, pending completion of the probable cause hearing.
- 2) An SVP may remain in custody for no more than 45 days, based on a showing of good cause, beyond the SVP's scheduled release date for a full evaluation.

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The author will propose adoption of an urgency clause.

FISCAL EFFECT

Minor, if any, costs for additional incarceration, offset by minor savings from not having to place the inmates in question on an intensive parole caseload for a short time.

COMMENT

- 1) Rationale. Current law allows an inmate to be detained past his release date until a probable cause hearing is held to civilly commit the inmate as an SVP. Last November, a court released a sex offender when the court had not completed the probable cause hearing. The inmate was returned to custody a week later when the hearing was completed. The Department of Corrections (CDC) kept the inmate on an intensive parole watch for that week.

The bill also clarifies that an inmate referred to the SVP process may be detained 45 days beyond the scheduled release date, in order to cover situations in which an inmate's release date may be unexpectedly moved up, or when a parole revocation term allows insufficient time to complete the evaluation process.

- 2) Current law defines a "sexually violent predator" as a person convicted of a sexually violent offense, as specified, against two or more victims for which he or she received a determinate sentence. An SVP must have a diagnosed mental disorder that makes the person a danger to the health and safety of others. A CDC inmate, or a parolee whose parole has been revoked, shall be evaluated at least six months prior to the scheduled date of release. If the

Department of Mental Health (DMH) determines the person is an SVP, a petition shall be filed for commitment as an SVP. A probable cause hearing must commence within 10 calendar days of a judge's determination that a hearing is warranted.

The Board of Prison Terms may order that a person referred to the DMH remain in custody for no more than 45 days, unless his or her scheduled date of release falls more than 45 days after referral.

Analysis Prepared by: Geoff Long / APPR. / (916)319-2081

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Exhibit "G"

Enrolled Bill Report  
Department of Corrections

June 12, 14, 2000

AGENCY <b>YOUTH AND ADULT CORRECTIONAL AGENCY</b>	BILL NUMBER <b>SENATE BILL 451</b>
DEPARTMENT, BOARD OR COMMISSION <b>CORRECTIONS</b>	AUTHOR <b>SCHIFF</b>

**SUMMARY**

Senate Bill (SB) 451 clarifies the authority of the Board of Prison Terms (BPT) to order that a person who is referred to the California Department of Mental Health (DMH) for evaluation as a sexually violent predator (SVP) remain in custody for a full evaluation for 45 days beyond the person's scheduled release date. Additionally, this bill revises procedures relating to probable cause review and hearing, including that the person remain in custody pending the completion of the hearing.

**HISTORY, SPONSORSHIP, AND RELATED BILLS**

As introduced, SB 451 dealt with criminal misconduct by public employees. These provisions were deleted from the bill March 2, 2000, and replaced with Youth and Adult Correctional Agency (YACA) sponsored language. These provisions passed the Legislature unanimously with the exception of a 72-2 vote on the Assembly Floor, with the No votes being cast by Democratic Members Migden and Washington. This bill is an urgency statute.

Assembly Bill (AB) 1458 (Wiggins) expands the scope of the existing SVP law to include persons convicted of continuous sexual abuse of a child. This bill expands the current definition of "predatory" to include sexually violent offenses against a child under the age of 14 years of age. This bill would allow an inmate, after serving an indeterminate term, to be committed as an SVP. Additionally, AB 1458 clarifies that a person can be referred for SVP commitment if they meet the offense criteria regardless of whether their current prison term is for a sexually violent offense. This bill was held under submission in the Senate Appropriations Committee during 1999.

AB 1845 (Runner) expands the definition of an SVP to include conduct with any person 18 years of age or older with whom a relationship has been established or promoted or with whom a familial relationship exists. This bill was held under submission by the Assembly Appropriations Committee during 2000.

AB 2849 (Havice) expands the definition of "conviction," as it relates to defining an SVP, to include a conviction that resulted in an indeterminate sentence or probation. This bill is pending on the Assembly Floor.

**IMPACT ANALYSIS**



The existing SVP law [Welfare and Institutions Code (WIC) §6600, et seq.] provides for the civil commitment for psychiatric treatment of a prison inmate found to be an SVP after the person has served his or her prison commitment.

Existing law (WIC §6600) defines an SVP as a person who has been convicted of a sexually violent offense, as specified, against two or more victims for which he or she received a determinate sentence. An SVP must have 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.

Existing law [WIC §6601(a)(1) and §6601(h)] provides that a person who is under the jurisdiction of the California Department of Corrections (CDC) shall be referred to DMH for evaluation at least six months prior to the scheduled date of release. If the DMH determines that the person qualifies as an SVP, the case is referred to the appropriate district attorney to file a petition for civil commitment as an SVP.

**RECOMMENDATION**

**Sign the Bill.**

	DATE 6-12-00	AGENCY 	DATE 6-14-00
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Page 2

Existing law (WIC §6601.3) authorizes the BPT to order that a person referred to DMH remain in custody for no more than 45 days, unless his or her scheduled date of release falls more than 45 days after referral.

Existing law (WIC §6602) provides for a probable cause hearing and a judicial order that the person remain in custody until a trial is completed.

Existing law (WIC §6601.5) allows a judge to order a person held until a probable cause hearing is complete if the WIC §6601.3 hold will expire prior to the completion of the probable cause hearing. Unfortunately, the language of WIC §6601.5 was found to be ambiguous by a Superior Court in San Joaquin County. Due to their interpretation that they did not have authority to hold the parolee in custody until the completion of the probable cause hearing, the court released the parolee in November 1999 when the probable cause hearing was continued. In November 1999, a San Joaquin County court released an SVP when the court had not completed the probable cause hearing. The inmate was returned to custody a week later when the hearing was completed. CDC kept the inmate on an intensive parole watch for that week.

SB 451 clarifies the SVP law by providing that a person may be held in custody pending completion of the probable cause hearing. This bill also clarifies that an inmate referred to the SVP process may be detained 45 days beyond the scheduled release date, in order to cover situations in which an inmate's release date may be unexpectedly moved up, or when a parole revocation term allows insufficient time to complete the evaluation process. Specifically, this bill provides that:

1. Upon a showing of good cause, a person may remain in custody pursuant to action by the BPT for a full evaluation by DMH for no more than 45 days beyond the person's scheduled release date.
2. Upon filing of a commitment petition by the district attorney, if the petition contains sufficient facts that, if true, would constitute probable cause, the judge shall order that the person be detained until a probable cause hearing can be completed, and the hearing shall commence within 10 calendar days of the judge's order.
3. Upon the commencement of the probable cause hearing, the person shall remain in custody pending the completion of the hearing.
4. The probable cause hearing shall not be continued except upon a showing of good cause by the party requesting the continuance.

#### FISCAL IMPACT

None.

#### OTHER STATES' ACTIVITIES

Sixteen states have statutes that authorize the confinement and treatment of highly dangerous sex offenders following completion of their criminal sentence: Arizona, California, Florida, Iowa, Massachusetts, Minnesota, Mississippi, New Jersey, North Dakota, South Carolina, Texas (outpatient treatment only), Virginia, Washington, and Wisconsin. These laws are commonly known as "sexual predator" laws. Other state statutes authorize commitment and treatment of sex offenders as an alternative to sentencing.

#### ARGUMENTS PRO AND CON

**PRO:** According to the author: "The issue is the legal authority to detain these offenders after their parole date while the court conducts hearings to determine if they meet SVP criteria. The law authorizes two temporary holds. The legislative intent of these holds was to protect public safety by keeping these persons in custody pending court disposition. The language in W & I Section 6601.5 is ambiguous and has caused confusion. It states that this hold may be imposed by the court when the person's parole expires rather than when the offender is released to parole. This requires immediate correction to ensure that SVP candidates are not released into the community prior to a probable cause determination by the court."

**CON:** None.

#### RECOMMENDATION

**SIGN the bill.**

## DECLARATION OF SERVICE

I, the undersigned, declare I am over eighteen years of age, and not a party to the within cause; my business address is 320 West Temple Street, Suite 590, Los Angeles, California 90012;

That on July 15, 2010, I served a copy of the within MOTION FOR JUDICIAL NOTICE IN SUPPORT OF REAL PARTY IN INTEREST'S OPENING BRIEF ON THE MERITS; PROPOSED ORDER, CHRISTOPHER SHARKEY, on each of the persons named below by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail in the City of Los Angeles, addressed as follows:

PAMELA C. HAMANAKA  
SENIOR ASSISTANT ATTORNEY GENERAL  
STATE OF CALIFORNIA  
300 SOUTH SPRING STREET  
LOS ANGELES, CA 90013

HONORABLE MARIA E. STRANTON  
JUDGE, LOS ANGELES SUPERIOR COURT  
DEPARTMENT 95  
1150 NORTH SAN FERNANDO ROAD  
LOS ANGELES, CA 90065

CLERK, CALIFORNIA COURT OF APPEAL  
DIVISION THREE  
300 SOUTH SPRING STREET  
LOS ANGELES, CA 90013

I further declare that I served the above referred-to document by hand delivering a copy thereof addressed to:

STEVE COOLEY, DISTRICT ATTORNEY  
APPELLATE DIVISION  
320 WEST TEMPLE STREET, SUITE 540  
LOS ANGELES, CA 90012

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 15, 2010, at Los Angeles, California.

  
\_\_\_\_\_  
ZENaida GAETOS