

COPY

SUPREME COURT
FILED

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA DEC 24 2015

Frank A. McGuire Clerk

**PEOPLE OF THE STATE OF
CALIFORNIA,**

Petitioner,

v.

**ORANGE COUNTY SUPERIOR
COURT,**

Respondent;

RICHARD ANTHONY SMITH,

Real Party in Interest.

Deputy

Supreme Court Case No. S225562

Court of Appeal Case No. G050827

Orange County Superior Court
Case No. M-9531; The Honorable
Kimberly Menninger, Judge.

**MOTION FOR JUDICIAL NOTICE
(EVIDENCE CODE § 459 AND CAL. RULES OF COURT,
RULE 8.252(a) AND 8.520(g))**

OFFICE OF THE ORANGE COUNTY PUBLIC DEFENDER

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Attorneys for Real Party in Interest

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

ORANGE COUNTY SUPERIOR COURT,

Respondent;

RICHARD ANTHONY SMITH,

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Supreme Court Case No. S225562

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Kimberly Menninger, Judge.

TO: THE HONORABLE PRESIDING JUSTICE AND HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT.

MOTION FOR JUDICIAL NOTICE

Petitioner has concurrently filed a Reply / Supplemental Brief on the Merits. In support of the brief, Petitioner requests this Honorable Court take judicial notice of the following documents pursuant to section 459 of the Evidence Code and California Rules of Court, rule 8.252(a) and 8.520(g):

- (1) Senate Bill 507 (2015-2016 Regular Session) as amended by the Senate on April 30, 2015. A copy is attached hereto as Exhibit A for ease of reference.
- (2) Senate Bill 507 (2015-2016 Regular Session) as amended by the Senate on April 30, 2015, and June 2, 2015. A copy is attached hereto as Exhibit B for ease of reference.
- (3) Senate Bill 507 (2015-2016 Regular Session) as amended by the Senate on April 30, 2015, and June 2, 2015, and amended by the

Assembly on July 2, 2015. A copy is attached hereto as Exhibit C for ease of reference.

(4) Senate Bill 507 (2015-2016 Regular Session) as passed by the Assembly on September 10, 2015, passed by the Senate on September 11, 2015, and enrolled on September 15, 2015. A copy is attached hereto as Exhibit D for ease of reference.

(5) Senate Bill 507 (2015-2016 Regular Session) as approved by the Governor and filed with the Secretary of State on October 7, 2015. A copy is attached hereto as Exhibit E for ease of reference.

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MEMORANDUM OF POINTS AND AUTHORITIES

The Evidence Code allows California courts to take judicial notice of appropriate matters (Evid. Code § 450, *et seq.*) This authority extends to appellate courts as well as trial courts. (Evid. Code § 459; Cal. Rules of Court, rule 8.252(a) and 8.520(g).)

The Law Revision Commission Comment to section 450 of the Evidence Code indicates that a court may consider legislative history. The court's authority to do so is inherent in the requirement that it take judicial notice of the law. In many cases, the meaning and validity of statutes, the precise nature of a common law rule, or the correct interpretation of a constitutional provision can be determined only with the help of such extrinsic aids.

Based on the foregoing, Petitioner respectfully requests this Honorable Court take judicial notice of Exhibits A through E.

Dated: December 14, 2015

Respectfully submitted,
FRANK OSPINO
Public Defender
SHARON PETROSINO
Chief Deputy Public Defender


MARK S. BROWN

Senior Assistant Public Defender

EXHIBIT A

(Senate Bill 507 as amended April 30, 2015)



California
LEGISLATIVE INFORMATION

SB-507 Sexually violent predators. (2015-2016)

AMENDED IN SENATE APRIL 30, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

SENATE BILL

No. 507

Introduced by Senator Pavley

February 26, 2015

An act to amend Section 6603 of the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

SB 507, as amended, Pavley. Sexually violent predators.

Existing law provides for the civil commitment of criminal offenders who have been determined to be sexually violent predators for treatment in a secure state hospital facility. Under existing law, persons to be evaluated for civil commitment are evaluated by 2 practicing psychiatrists or psychologists designated by the Director of State Hospitals. If both evaluators concur that the person is likely to engage in acts of sexual violence without appropriate treatment and custody, the director is required to forward a request for a petition for commitment to the district attorney or county counsel, who may then file the petition with the court.

Under existing law, if one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, the attorney petitioning for commitment may request the department to perform replacement evaluations. These replacement evaluations include the review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated. Existing law requires that the department forward the replacement evaluations to the petitioning attorney and to the counsel for the person who is the subject of the commitment hearing.

This bill would provide that the attorneys in the civil commitment proceeding have the same access to medical and psychological records as the evaluators performing a replacement evaluation, and would direct the court to issue a subpoena or court order for those records upon request. require the evaluator performing an updated evaluation to include a statement listing the medical and psychological records reviewed by the evaluator, and would direct the court to issue a subpoena, upon the request of either party to the civil commitment proceeding, for a certified copy of these records. The bill would authorize the attorneys to use the records in the commitment proceeding, but would prohibit disclosure of the records for any other purpose. The bill would also prohibit the attorney petitioning for commitment from providing access to these records to any 3rd party, including an expert retained or sought to be retained by that attorney, without the consent of the court upon noticed motion.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. 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, to the assistance of counsel, to the right to retain experts or professional persons to perform an examination on his or her behalf, and to 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. Any right that may exist under this section to request DNA testing on prior cases shall be made in conformity with Section 1405 of the Penal Code.

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

(c) (1) If the attorney petitioning for commitment under this article determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of State Hospitals to perform updated evaluations. If one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, the attorney petitioning for commitment under this article may request the State Department of State Hospitals to perform replacement evaluations. When a request is made for updated or replacement evaluations, the State Department of State Hospitals shall perform the requested evaluations and forward them to the petitioning attorney and to the counsel for the person subject to this article. However, updated or replacement evaluations shall not be performed except as necessary to update one or more of the original evaluations or to replace the evaluation of an evaluator who is no longer available to testify for the petitioner in court proceedings. These updated or replacement evaluations shall include review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated, either voluntarily or by court order. If an updated or replacement evaluation results in a split opinion as to whether the person subject to this article meets the criteria for commitment, the State Department of State Hospitals shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601.

(2) For purposes of this subdivision, "no longer available to testify for the petitioner in court proceedings" means that the evaluator is no longer authorized by the Director of State Hospitals to perform evaluations regarding sexually violent predators as a result of any of the following:

(A) The evaluator has failed to adhere to the protocol of the State Department of State Hospitals.

(B) The evaluator's license has been suspended or revoked.

(C) The evaluator is unavailable pursuant to Section 240 of the Evidence Code.

(D) The independent professional or state employee who has served as the evaluator has resigned or retired and has not entered into a new contract to continue as an evaluator in the case, unless this evaluator, in his or her most recent evaluation of the person subject to this article, opined that the person subject to this article does not meet the criteria for commitment.

(d) Nothing in this section shall prevent the defense from presenting otherwise relevant and admissible evidence.

(e) If the person subject to this article or the petitioning attorney does not demand a jury trial, the trial shall be before the court without a jury.

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

(g) The court shall notify the State Department of State Hospitals 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.

(h) Nothing in this section shall limit any legal or equitable right that a person may have to request DNA testing.

(i) Nothing in subparagraph (D) of paragraph (2) of subdivision (c) shall be construed to affect the authority of the State Department of State Hospitals to conduct two additional evaluations when an updated or replacement evaluation results in a split opinion.

~~(j) (1) Notwithstanding any other law, the attorney petitioning for commitment and the counsel for the person subject to this article shall have the same access to records as an evaluator pursuant to paragraph (1) of subdivision (c), and the court shall issue a subpoena or court order for those records upon request. The evaluator performing an updated evaluation shall include with the evaluation a statement listing all records reviewed by the evaluator pursuant to subdivision (c). The court shall issue a subpoena, upon the request of either party, for a certified copy of these records. The records shall be provided to the attorney petitioning for commitment and the counsel for the person subject to this article. The attorneys may use the records in proceedings under this article and shall not disclose them for any other purpose. The records are confidential to the extent otherwise provided by law.~~

(2) This subdivision does not affect any right of a party to object to the introduction of evidence that is more prejudicial than probative.

(3) This subdivision does not create any new rights or limitations regarding the retention of an expert witness by either party or access to records by an expert retained or sought to be retained by either party. The attorney petitioning for commitment shall not provide access to the records obtained under paragraph (1) to any third party, including an expert retained or sought to be retained by that attorney, without the consent of the court upon noticed motion.

(4) This subdivision does not affect any right of a party to seek to obtain other records regarding the person subject to this article.

(5) Except as provided in paragraph (1), this subdivision does not affect any right of a committed person to assert that records are confidential under Section 5328 of this code or Section 1014 of the Evidence Code.

EXHIBIT B

(Senate Bill 507 as amended April 30, 2015, and June 2, 2015)



California.
LEGISLATIVE INFORMATION

SB-507 Sexually violent predators. (2015-2016)

AMENDED IN SENATE JUNE 02, 2015

AMENDED IN SENATE APRIL 30, 2015

CALIFORNIA LEGISLATURE— 2015-2016 REGULAR SESSION

SENATE BILL

No. 507

Introduced by Senator Pavley

February 26, 2015

An act to amend Section 6603 of the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

SB 507, as amended, Pavley. Sexually violent predators.

Existing law provides for the civil commitment of criminal offenders who have been determined to be sexually violent predators for treatment in a secure state hospital facility. Under existing law, persons to be evaluated for civil commitment are evaluated by 2 practicing psychiatrists or psychologists designated by the Director of State Hospitals. If both evaluators concur that the person is likely to engage in acts of sexual violence without appropriate treatment and custody, the director is required to forward a request for a petition for commitment to the district attorney or county counsel, who may then file the petition with the court.

Under existing law, ~~if one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, if the attorney petitioning for commitment determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney petitioning for commitment may request the department to perform replacement evaluations. These replacement evaluations updated evaluations, which~~ include the review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated. Existing law requires that the department forward the ~~replacement~~ *updated* evaluations to the petitioning attorney and to the counsel for the person who is the subject of the commitment hearing.

This bill would require the evaluator performing an updated evaluation to include a statement listing the medical and psychological records reviewed by the evaluator, and would direct the court to issue a subpoena, upon the request of either party to the civil commitment proceeding, for a certified copy of these records. *The bill would authorize either party to move to quash the subpoena, in whole or in part, on the ground that a record or portion of a record is not likely to lead to the discovery of admissible evidence regarding whether the person is a sexually violent predator.* The bill would authorize the attorneys to use the records in the commitment proceeding, but would prohibit disclosure of the records for any other purpose. The bill would also prohibit the

attorney petitioning for commitment from providing access to these records to any 3rd party, including an expert retained or sought to be retained by that attorney, without the consent of the court upon noticed motion.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. 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, to the assistance of counsel, to the right to retain experts or professional persons to perform an examination on his or her behalf, and to 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. Any right that may exist under this section to request DNA testing on prior cases shall be made in conformity with Section 1405 of the Penal Code.

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

(c) (1) If the attorney petitioning for commitment under this article determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of State Hospitals to perform updated evaluations. If one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, the attorney petitioning for commitment under this article may request the State Department of State Hospitals to perform replacement evaluations. When a request is made for updated or replacement evaluations, the State Department of State Hospitals shall perform the requested evaluations and forward them to the petitioning attorney and to the counsel for the person subject to this article. However, updated or replacement evaluations shall not be performed except as necessary to update one or more of the original evaluations or to replace the evaluation of an evaluator who is no longer available to testify for the petitioner in court proceedings. These updated or replacement evaluations shall include review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated, either voluntarily or by court order. If an updated or replacement evaluation results in a split opinion as to whether the person subject to this article meets the criteria for commitment, the State Department of State Hospitals shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601.

(2) For purposes of this subdivision, "no longer available to testify for the petitioner in court proceedings" means that the evaluator is no longer authorized by the Director of State Hospitals to perform evaluations regarding sexually violent predators as a result of any of the following:

(A) The evaluator has failed to adhere to the protocol of the State Department of State Hospitals.

(B) The evaluator's license has been suspended or revoked.

(C) The evaluator is unavailable pursuant to Section 240 of the Evidence Code.

(D) The independent professional or state employee who has served as the evaluator has resigned or retired and has not entered into a new contract to continue as an evaluator in the case, unless this evaluator, in his or her most recent evaluation of the person subject to this article, opined that the person subject to this article does not meet the criteria for commitment.

(d) ~~Nothing in this section shall~~ *This section does not* prevent the defense from presenting otherwise relevant and admissible evidence.

(e) If the person subject to this article or the petitioning attorney does not demand a jury trial, the trial shall be before the court without a jury.

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

(g) The court shall notify the State Department of State Hospitals 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.

(h) ~~Nothing in this section shall~~ *This section does not* limit any legal or equitable right that a person may have to request DNA testing.

(i) ~~Nothing in subparagraph~~ *Subparagraph* (D) of paragraph (2) of subdivision (c) ~~shall be construed to~~ *does not* affect the authority of the State Department of State Hospitals to conduct two additional evaluations when an updated or replacement evaluation results in a split opinion.

(j) (1) Notwithstanding any other ~~law~~ *law*, the evaluator performing an updated evaluation shall include with the evaluation a statement listing all records reviewed by the evaluator pursuant to subdivision (c). The court shall issue a subpoena, upon the request of either party, for a certified copy of these records. The records shall be provided to the attorney petitioning for commitment and the counsel for the person subject to this article. The attorneys may use the records in proceedings under this article and shall not disclose them for any other purpose.

(2) Either party may move to quash the subpoena, in whole or in part, on the ground that a record or portion of a record is not likely to lead to the discovery of admissible evidence regarding whether the person subject to this article is a sexually violent predator, as defined in subdivision (a) of Section 6600. If the motion to quash is granted, in whole or in part, the record or records shall retain any confidentiality that may apply under Section 5328 of this code and Section 1014 of the Evidence Code.

~~(2)~~

(3) This subdivision does not affect any right of a party to object to the introduction of evidence that is more prejudicial than probative.

~~(3)~~

(4) This subdivision does not create any new rights or limitations regarding the retention of an expert witness by either party or access to records by an expert retained or sought to be retained by either party. The attorney petitioning for commitment shall not provide access to the records obtained under paragraph (1) to any third party, including an expert retained or sought to be retained by that attorney, without the consent of the court upon noticed motion.

~~(4)~~

(5) This subdivision does not affect any right of a party to seek to obtain other records regarding the person subject to this article.

~~(5)~~

(6) Except as provided in paragraph (1), this subdivision does not affect any right of a committed person to assert that records are confidential under Section 5328 of this code or Section 1014 of the Evidence Code.

EXHIBIT C

**(Senate Bill 507 as amended April 30, 2015, June 2, 2015, and
July 2, 2015)**



California
LEGISLATIVE INFORMATION

SB-507 Sexually violent predators. (2015-2016)

AMENDED IN ASSEMBLY JULY 02, 2015

AMENDED IN SENATE JUNE 02, 2015

AMENDED IN SENATE APRIL 30, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

SENATE BILL

No. 507

Introduced by Senator Pavley

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Under existing law, if the attorney petitioning for commitment determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the department to perform updated evaluations, which include the review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated. Existing law requires that the department forward the updated evaluations to the petitioning attorney and to the counsel for the person who is the subject of the commitment hearing.

This bill would require the evaluator performing an updated evaluation to include a statement listing the medical and psychological records reviewed by the evaluator, and would direct the court to issue a subpoena, upon the request of either party to the civil commitment proceeding, for a certified copy of these records. ~~The bill would authorize either party to move to quash the subpoena, in whole or in part, on the ground that a record or portion of a record is not likely to lead to the discovery of admissible evidence regarding whether the person is a sexually violent predator.~~ The bill would authorize the attorneys to use the records in the commitment proceeding, but would prohibit disclosure of the records for any other purpose. ~~The bill would also prohibit the attorney petitioning for commitment from providing access to these records to any 3rd party, including an expert retained or sought to be retained by that attorney, without the consent of the court upon noticed motion.~~

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

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

(c) (1) If the attorney petitioning for commitment under this article determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of State Hospitals to perform updated evaluations. If one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, the attorney petitioning for commitment under this article may request the State Department of State Hospitals to perform replacement evaluations. When a request is made for updated or replacement evaluations, the State Department of State Hospitals shall perform the requested evaluations and forward them to the petitioning attorney and to the counsel for the person subject to this article. However, updated or replacement evaluations shall not be performed except as necessary to update one or more of the original evaluations or to replace the evaluation of an evaluator who is no longer available to testify for the petitioner in court proceedings. These updated or replacement evaluations shall include review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated, either voluntarily or by court order. If an updated or replacement evaluation results in a split opinion as to whether the person subject to this article meets the criteria for commitment, the State Department of State Hospitals shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601.

(2) For purposes of this subdivision, "no longer available to testify for the petitioner in court proceedings" means that the evaluator is no longer authorized by the Director of State Hospitals to perform evaluations regarding sexually violent predators as a result of any of the following:

(A) The evaluator has failed to adhere to the protocol of the State Department of State Hospitals.

(B) The evaluator's license has been suspended or revoked.

(C) The evaluator is unavailable pursuant to Section 240 of the Evidence Code.

(D) The independent professional or state employee who has served as the evaluator has resigned or retired and has not entered into a new contract to continue as an evaluator in the case, unless this evaluator, in his or her most recent evaluation of the person subject to this article, opined that the person subject to this article does not meet the criteria for commitment.

(d) This section does not prevent the defense from presenting otherwise relevant and admissible evidence.

(e) If the person subject to this article or the petitioning attorney does not demand a jury trial, the trial shall be before the court without a jury.

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

(g) The court shall notify the State Department of State Hospitals 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.

(h) This section does not limit any legal or equitable right that a person may have to request DNA testing.

(i) Subparagraph (D) of paragraph (2) of subdivision (c) does not affect the authority of the State Department of State Hospitals to conduct two additional evaluations when an updated or replacement evaluation results in a split opinion.

(j) (1) Notwithstanding any other law, the evaluator performing an updated evaluation shall include with the evaluation a statement listing all records reviewed by the evaluator pursuant to subdivision (c). The court shall issue a subpoena, upon the request of either party, for a certified copy of these records. The records shall be provided to the attorney petitioning for commitment and the counsel for the person subject to this article. The attorneys may use the records in proceedings under this article and shall not disclose them for any other purpose.

~~(2) Either party may move to quash the subpoena, in whole or in part, on the ground that a record or portion of a record is not likely to lead to the discovery of admissible evidence regarding~~ *This subdivision does not affect the right of a party to object to the introduction at trial of all or a portion of a record subpoenaed under paragraph (1) on the ground that it is more prejudicial than probative pursuant to Section 352 of the Evidence Code or that it is not material to the issue of whether the person subject to this article is a sexually violent predator, as defined in subdivision (a) of Section 6600, or to any other issue to be decided by the court.* If the ~~motion to quash relief~~ is granted, in whole or in part, the record or records shall retain any confidentiality that may apply under Section 5328 of this code and Section 1014 of the Evidence Code.

~~(3) This subdivision does not affect any right of a party to object to the introduction of evidence that is more prejudicial than probative.~~

~~(4) This subdivision does not create any new rights or limitations regarding the retention of an expert witness by either party or access to records by an expert retained or sought to be retained by either party. The attorney petitioning for commitment shall not provide access to the records obtained under paragraph (1) to any third party, including an expert retained or sought to be retained by that attorney, without the consent of the court upon noticed motion.~~

~~(5)~~

~~(3) This subdivision does not affect any right of a party to seek to obtain other records regarding the person subject to this article.~~

~~(6)~~

~~(4) Except as provided in paragraph (1), this subdivision does not affect any right of a committed person to assert that records are confidential under Section 5328 of this code or Section 1014 of the Evidence Code.~~

SEC. 2. *Nothing in this act is intended to affect the determination by the Supreme Court of California, in People v. Superior Court (Smith) (Docket No. S225562), whether an expert retained by the district attorney in a proceeding under the Sexually Violent Predator Act (Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code) is entitled to review otherwise confidential treatment information under Section 5328 of the Welfare and Institutions Code.*

EXHIBIT D

(Senate Bill 507 as passed by the Assembly on September 10, 2015, passed by the Senate on September 11, 2015, and enrolled on September 15, 2015)



California
LEGISLATIVE INFORMATION

SB-507 Sexually violent predators. (2015-2016)

ENROLLED SEPTEMBER 15, 2015
PASSED IN SENATE SEPTEMBER 11, 2015
PASSED IN ASSEMBLY SEPTEMBER 10, 2015
AMENDED IN ASSEMBLY JULY 02, 2015
AMENDED IN SENATE JUNE 02, 2015
AMENDED IN SENATE APRIL 30, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

SENATE BILL

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Under existing law, if the attorney petitioning for commitment determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the department to perform updated evaluations, which include the review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated. Existing law requires that the department forward the updated evaluations to the petitioning attorney and to the counsel for the person who is the subject of the commitment hearing.

This bill would require the evaluator performing an updated evaluation to include a statement listing the medical and psychological records reviewed by the evaluator, and would direct the court to issue a subpoena, upon the request of either party to the civil commitment proceeding, for a certified copy of these records. The bill would authorize the attorneys to use the records in the commitment proceeding, but would prohibit disclosure of the records for any other purpose.

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

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(B) The evaluator's license has been suspended or revoked.

(C) The evaluator is unavailable pursuant to Section 240 of the Evidence Code.

(D) The independent professional or state employee who has served as the evaluator has resigned or retired and has not entered into a new contract to continue as an evaluator in the case, unless this evaluator, in his or her most recent evaluation of the person subject to this article, opined that the person subject to this article does not meet the criteria for commitment.

(d) This section does not prevent the defense from presenting otherwise relevant and admissible evidence.

(e) If the person subject to this article or the petitioning attorney does not demand a jury trial, the trial shall be before the court without a jury.

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

(g) The court shall notify the State Department of State Hospitals 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.

(h) This section does not limit any legal or equitable right that a person may have to request DNA testing.

(i) Subparagraph (D) of paragraph (2) of subdivision (c) does not affect the authority of the State Department of State Hospitals to conduct two additional evaluations when an updated or replacement evaluation results in a split opinion.

(j) (1) Notwithstanding any other law, the evaluator performing an updated evaluation shall include with the evaluation a statement listing all records reviewed by the evaluator pursuant to subdivision (c). The court shall issue a subpoena, upon the request of either party, for a certified copy of these records. The records shall be provided to the attorney petitioning for commitment and the counsel for the person subject to this article. The attorneys may use the records in proceedings under this article and shall not disclose them for any other purpose.

(2) This subdivision does not affect the right of a party to object to the introduction at trial of all or a portion of a record subpoenaed under paragraph (1) on the ground that it is more prejudicial than probative pursuant to Section 352 of the Evidence Code or that it is not material to the issue of whether the person subject to this article is a sexually violent predator, as defined in subdivision (a) of Section 6600, or to any other issue to be decided by the court. If the relief is granted, in whole or in part, the record or records shall retain any confidentiality that may apply under Section 5328 of this code and Section 1014 of the Evidence Code.

(3) This subdivision does not affect any right of a party to seek to obtain other records regarding the person subject to this article.

(4) Except as provided in paragraph (1), this subdivision does not affect any right of a committed person to assert that records are confidential under Section 5328 of this code or Section 1014 of the Evidence Code.

SEC. 2. Nothing in this act is intended to affect the determination by the Supreme Court of California, in *People v. Superior Court (Smith)* (Docket No. S225562), whether an expert retained by the district attorney in a proceeding under the Sexually Violent Predator Act (Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code) is entitled to review otherwise confidential treatment information under Section 5328 of the Welfare and Institutions Code.

EXHIBIT E

**(Senate Bill 507 as approved by the Governor and filed with the Secretary
of State on October 7, 2015)**



California
LEGISLATIVE INFORMATION

SB-507 Sexually violent predators. (2015-2016)

Senate Bill No. 507

CHAPTER 576

An act to amend Section 6603 of the Welfare and Institutions Code, relating to sexually violent predators.

[Approved by Governor October 07, 2015. Filed with Secretary of State October 07, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 507, Pavley. Sexually violent predators.

Existing law provides for the civil commitment of criminal offenders who have been determined to be sexually violent predators for treatment in a secure state hospital facility. Under existing law, persons to be evaluated for civil commitment are evaluated by 2 practicing psychiatrists or psychologists designated by the Director of State Hospitals. If both evaluators concur that the person is likely to engage in acts of sexual violence without appropriate treatment and custody, the director is required to forward a request for a petition for commitment to the district attorney or county counsel, who may then file the petition with the court.

Under existing law, if the attorney petitioning for commitment determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the department to perform updated evaluations, which include the review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated. Existing law requires that the department forward the updated evaluations to the petitioning attorney and to the counsel for the person who is the subject of the commitment hearing.

This bill would require the evaluator performing an updated evaluation to include a statement listing the medical and psychological records reviewed by the evaluator, and would direct the court to issue a subpoena, upon the request of either party to the civil commitment proceeding, for a certified copy of these records. The bill would authorize the attorneys to use the records in the commitment proceeding, but would prohibit disclosure of the records for any other purpose.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. 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, to the assistance of counsel, to the right to retain experts or professional persons to perform an examination on his or her behalf, and to 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. Any right that may exist under this section to request DNA testing on prior cases shall be made in conformity with Section 1405 of the Penal Code.

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

(c) (1) If the attorney petitioning for commitment under this article determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of State Hospitals to perform updated evaluations. If one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, the attorney petitioning for commitment under this article may request the State Department of State Hospitals to perform replacement evaluations. When a request is made for updated or replacement evaluations, the State Department of State Hospitals shall perform the requested evaluations and forward them to the petitioning attorney and to the counsel for the person subject to this article. However, updated or replacement evaluations shall not be performed except as necessary to update one or more of the original evaluations or to replace the evaluation of an evaluator who is no longer available to testify for the petitioner in court proceedings. These updated or replacement evaluations shall include review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated, either voluntarily or by court order. If an updated or replacement evaluation results in a split opinion as to whether the person subject to this article meets the criteria for commitment, the State Department of State Hospitals shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601.

(2) For purposes of this subdivision, "no longer available to testify for the petitioner in court proceedings" means that the evaluator is no longer authorized by the Director of State Hospitals to perform evaluations regarding sexually violent predators as a result of any of the following:

(A) The evaluator has failed to adhere to the protocol of the State Department of State Hospitals.

(B) The evaluator's license has been suspended or revoked.

(C) The evaluator is unavailable pursuant to Section 240 of the Evidence Code.

(D) The independent professional or state employee who has served as the evaluator has resigned or retired and has not entered into a new contract to continue as an evaluator in the case, unless this evaluator, in his or her most recent evaluation of the person subject to this article, opined that the person subject to this article does not meet the criteria for commitment.

(d) This section does not prevent the defense from presenting otherwise relevant and admissible evidence.

(e) If the person subject to this article or the petitioning attorney does not demand a jury trial, the trial shall be before the court without a jury.

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

(g) The court shall notify the State Department of State Hospitals 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.

(h) This section does not limit any legal or equitable right that a person may have to request DNA testing.

(i) Subparagraph (D) of paragraph (2) of subdivision (c) does not affect the authority of the State Department of State Hospitals to conduct two additional evaluations when an updated or replacement evaluation results in a split opinion.

(j) (1) Notwithstanding any other law, the evaluator performing an updated evaluation shall include with the evaluation a statement listing all records reviewed by the evaluator pursuant to subdivision (c). The court shall issue a subpoena, upon the request of either party, for a certified copy of these records. The records shall be provided to the attorney petitioning for commitment and the counsel for the person subject to this article. The attorneys may use the records in proceedings under this article and shall not disclose them for any other purpose.

(2) This subdivision does not affect the right of a party to object to the introduction at trial of all or a portion of a record subpoenaed under paragraph (1) on the ground that it is more prejudicial than probative pursuant to Section 352 of the Evidence Code or that it is not material to the issue of whether the person subject to this article is a sexually violent predator, as defined in subdivision (a) of Section 6600, or to any other issue to be decided by the court. If the relief is granted, in whole or in part, the record or records shall retain any confidentiality that may apply under Section 5328 of this code and Section 1014 of the Evidence Code.

(3) This subdivision does not affect any right of a party to seek to obtain other records regarding the person subject to this article.

(4) Except as provided in paragraph (1), this subdivision does not affect any right of a committed person to assert that records are confidential under Section 5328 of this code or Section 1014 of the Evidence Code.

SEC. 2. Nothing in this act is intended to affect the determination by the Supreme Court of California, in *People v. Superior Court (Smith)* (Docket No. S225562), whether an expert retained by the district attorney in a proceeding under the Sexually Violent Predator Act (Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code) is entitled to review otherwise confidential treatment information under Section 5328 of the Welfare and Institutions Code.

