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March 27, 2013

Ms. Heather Halsey
Executive Director
California Commission on State Mandates
900 Ninth Street, Suite 300
Sacramento, CA 95814

Re: County of San Diego's Comments to Request to Adopt a New Test Claim
Mandate Redetermination Request 12-MR-01
Sexually Violent Predators, (CSM 4509)
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763;
Statutes 1996, Chapter 4
Requestor: California Department of Finance

Dear Ms. Halsey:

The County of San Diego, on behalf of the San Diego County Office of the Public Defender, the San Diego District Attorney's Office and the San Diego County Sheriff (collectively referred to as the "County"), hereby submits the following comments in opposition to the Department of Finance's Request to Adopt a New Test Claim filed with the commission on January 15, 2013.

Introduction

In 1998, the commission found that the California Constitution requires the state to reimburse local entities for performing certain activities set forth in Welfare & Institutions Code ("W&I"). ("SVP Mandate"; Statement of Decision ("SOD"), Case No. CSM – 4509, June 25, 1998.) The Department of Finance ("DOF") now asks the commission to set aside its prior test claim decision because the adoption of Proposition 83 in 2006 ("Jessica's Law") constituted a subsequent change in the law, as defined in

Government Code¹ section 17570(a)(2), that eliminated the state's constitutional obligation to reimburse local entities pursuant to Section 17556(f).

The DOF's Request to Adopt a New Test Claim Decision ("DOF's Request") should be denied for any one of the following reasons:

1. The DOF's Request ignores the fact that Jessica's Law did not make any changes material to the relevant statutes as they existed immediately before the adoption of Jessica's Law and in fact did not even reenact substantial portions of the operative legislation that created the mandate.
2. The DOF's Request ignores the fact that in 2012 the Legislature reenacted all of the relevant W&I Code provisions that contain the mandated activities with only minor immaterial changes and that this legislation supersedes any effects that Jessica's Law may have had on the state's obligation to reimburse local entities for the mandated activities.
3. The DOF's Request is based on the unconstitutionally broad language in Section 17556(f) that impermissibly directs the commission to apply the ballot measure exception to previously enacted legislation that the commission previously found to contain constitutionally mandated activities.
4. The DOF's Request relies on the unconstitutionally broad definition of what constitutes a "subsequent change in the law" set forth in Section 17570 that would convert all legislation previously found to contain reimbursable activities to non-reimbursable activities simply by reason of the inclusion of such legislation in a ballot measure, regardless of whether the ballot measure actually "modifies" existing law.

Statement of Applicable Law

In *California School Boards Assn. v. State*, 171 Cal. App. 4th 1183 (2009), the Court found provisions in Legislation enacted in 2005 directing the commission to set aside and reconsider previously approved test claim decisions to be unconstitutional in violation of the separation of powers clause contained in the California Constitution. *Id.* at 1199. In response to this decision, the Legislature enacted Section 17570 (Stats. 2010, c. 719 (SB 856), § 33, eff. Oct. 19, 2010) that gave the commission the authority, under

¹ Unless otherwise noted all references are to the Government Code.

certain circumstances, to “adopt a new test claim decision to supersede a previously adopted test claim decision.” Section 17570(b).

Pursuant to Section 17570(b), the commission can only adopt a new test claim decision upon a showing that the state’s liability for that test claim under the Constitution “has been modified based on a subsequent change in the law.” The DOF has the burden to identify “... a subsequent change in law ... *material to the prior test claim decision* that may modify the state’s liability pursuant to Article XIII B, section 6, subdivision (a) of the California Constitution.” Cal. Code Regs. tit. 2, § 1190.05(a)(1), emphasis added.

The Legislature has further defined a “subsequent change in the law” to include “a change in law that requires a finding that an incurred cost ... is not a cost mandated by the state pursuant to Section 17556....” Section 17570(a)(2). As originally enacted, Section 17556 provided that costs incurred by local entities are not reimbursable if, among other things, a statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election. Stats. 1984, ch. 1459, § 1, pp. 5118, 5119; former Gov’t Code § 17556, subs. (a)(3) & (a)(6). In 2005, the Legislature amended Section 17556(f) with respect to ballot measure mandates to provide that costs are not reimbursable if “[t]he statute or executive order imposes duties that *are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election.*” Stats. 2005, ch. 72, § 7; Emphasis added for new statutory language. At that time, the Legislature also added a last sentence to Section 17556(f) that provides: “*This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.*” *Id.*; Emphasis added. In *California School Boards Assn. v. State*, 171 Cal. App. 4th 1183, the Court found the language “... reasonably within the scope of ...” to be unconstitutional because it was inconsistent with article XIII B, section 6 of the California Constitution (*Id.* at 1215-1216) but declined to determine the validity of the last sentence of Section 17556(f). *Id.* at 1217, fn. 11.

Jessica’s Law did not Change the Statutes Material to the Prior Test Claim

The DOF’s Request identifies the provisions in the W&I Code sections that contain the mandated activities the commission found to be reimbursable. When the changes to the relevant W&I Code sections imposed by Jessica’s Law are compared to the statutory law as it existed immediately before the adoption of Jessica’s Law², it

² The Legislature enacted SB 1128 as urgency legislation effective September 20, 2006, before the adoption of Jessica’s Law, which was effective November 8, 2006. The

becomes evident that Jessica's Law did not make any material changes to the provisions of the W&I Code sections that were previously found to contain mandated reimbursable activities. (See Attachment "A".) In fact, Jessica's Law did not even reenact W&I Code section 6602 or section 6603, which contain most of the activities that were found to be reimbursable mandated activities. A summary of the comparison between the statutory provisions containing the mandated activities as it existed immediately before Jessica's Law and the changes enacted by Jessica's Law is as follows:

W&I Code section 6601(i) – No change³.

W&I Code section 6601(j)⁴ – No change.

W&I Code section 6602 – Not included in and not reenacted by either SB 1128 or Jessica's Law.

W&I Code section 6603 – Not included in and not reenacted by either SB 1128 or Jessica's Law.

W&I Code section 6604 – No material change. The change in the commitment

DOF's Request ignores the changes made to existing law by reason of the enactment of SB 1128, and instead chooses to compare the law as it existed before SB 1128 to the law after the adoption of Jessica's Law. This comparison is misleading. As with Jessica's Law, nearly all of the changes in the law enacted by SB 1128 related to changes in the Penal Code that expanded the scope and number of crimes that would fall under the category of a sexually violent offense. As detailed in Attachment "A" to these comments, SB 1128 and Jessica's Law only made minor changes to a few of the code sections containing the mandated activities.

³ California Constitution article IV, section 9 provides that a statute cannot be amended unless the entire section is reenacted as amended. Jessica's Law did make minor changes to other subdivisions of W&I section 6601, as well as to other non-relevant subdivisions contained in W&I section 6605 and section 6608, which necessitated the reenactment of the entire sections. This can explain why W&I sections 6601(i), 6605(c), 6605(d), 6608(b), 6608(c) and 6608(d) were included in Jessica's Law even though no changes were made in existing law.

⁴ As noted by the DOF in its Request to Adopt a New Test Claim Decision at page 1, reference to subdivision (j) in the SOD and Ps&Gs is likely a typographical error. The reference should most likely be to subdivision (i).

period from two-years to “an indeterminate term” was made by SB 1128 that was enacted as urgency legislation effective September 20, 2006, prior to the adoption of Jessica’s Law. The other changes deleted extraneous language made irrelevant by the change in the commitment period to an indeterminate term.

W&I Code section 6605(b) – Changes only relate to the findings that the State Department of Mental Health must make before its Director will authorize SVP’s “to petition the court for conditional release to a less restrictive alternative or for an unconditional release.”

W&I Code section 6605(c) – No change.

W&I Code section 6605(d) – No change.

W&I Code section 6608(a) – Made one simple change in the first sentence. That sentence previously read: “Nothing in this article shall prohibit the [SVP] from petitioning the court for conditional release *and subsequent* unconditional discharge” (Emphasis added.) That sentence was amended to read ... “from petitioning the court for conditional release *or* unconditional discharge” (Emphasis added.)

W&I Code section 6608(b) – No change.

W&I Code section 6608(c) – No change.

W&I Code section 6608(d) – No change.

As noted above, Jessica’s Law did not reenact W&I Code section 6602 or section 6603. Those sections contain the bulk of the activities for which local entities are entitled to reimbursement. These activities include:

Activity 4 – Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. W&I Code § 6602.

Activity 5 – Preparation and attendance by the county’s designated counsel and indigent defense counsel at trial. W&I Code § 6603 and § 6604.

Activity 7 – Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. W& I Code § 6603 and § 6605(d).

Activity 8 – Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. W&I Code § 6602.

The DOF argues that these activities are no longer reimbursable because they were “necessary to implement” Jessica’s Law and therefore fall under the exception contained in Section 17556(f). This argument fails for two reasons. First, as noted, Jessica’s Law did not make any changes in the mandated activities. Therefore there was nothing new that needed to be implemented. Second, W&I sections 6602 and 6603 were enacted as part of the original SVP legislation and were already in effect. The reenactment of these code sections was not necessary to implement the provisions of Jessica’s Law because they already existed.

The commission can only set aside a prior test claim decision and adopt a new one upon a showing that the state’s liability “has been modified based on a subsequent change in the law.” Section 17570(b). The regulations require a showing of a “substantial possibility of prevailing” on the merits. As set forth above, because there has been no subsequent change in the law since the commission made its original findings, the DOF cannot demonstrate that the state’s liability has been modified. The DOF has not demonstrated a “substantial possibility of prevailing” on the merits and its request should be denied.

Reenactment of the Relevant W&I Code Sections Containing the Mandated Activities by the Legislature in 2012 Supersedes any Possible Adverse Consequences by the Inclusion of these Provisions in Jessica’s Law

In 2012, the Legislature amended the relevant W&I Code sections containing the mandated activities. (Stats. 2012, ch. 24; Stats 2012, ch. 440; and Stats 2012, ch. 790.) Notwithstanding that the changes were primarily administrative and in no way changed the mandated activities (just as was the case with Jessica’s Law), as required by Article IV, section 9 of the California Constitution, the entire text of the relevant sections was reenacted by the Legislature.

Even if one were to accept the DOF’s argument that the adoption of Jessica’s Law relieved the state of its obligation to reimburse local entities for the mandated activities pursuant to Section 17556(f), the 2012 legislation is now the operative legislation and supersedes any adverse consequences of the inclusion of these provisions in Jessica’s Law. As, such, the mandated activities continue to be “mandated by the state” and continue to be reimbursable.

The Application of the Ballot Measure Exception Contained in Section 17556(f) to Statutes Previously Found to Contain Activities for Which the Constitution Requires Reimbursement is Unconstitutional

The purpose of section 6 of Article XIII B “is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.” *County of San Diego v. State of California*, 15 Cal.4th 68, 81 (1997); *County of Fresno v. State*, 53 Cal.3d 482, 487 (1991). Section 6 “was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.” *Id*; *Redevelopment Agency v. Commission on State Mandates*, 55 Cal. App. 4th 976, 984-85 (1997).

When the commission adopted its original test claim decision, it properly concluded that the provisions of W&I Code sections 6601 – 6608 imposed a new program or higher level of service upon local entities and that the state was constitutionally required to provide a subvention of funds to reimburse local entities for the costs incurred in providing those services. (SOD, CSM – 4509, page 12; Article XIII B, section 6.) That decision has been final for nearly 15 years and as noted by the DOF, reimbursements to local entities for fiscal year 2010-2011 exceeded \$20.75 million and are budgeted to exceed \$21.75 million for fiscal year 2013-2014. (DOF’s Request, page 6.)

When the Legislature amended Section 17556(f) in 2005, it expressly made the ballot measure exception applicable “regardless of whether the statute ... was enacted ... before or after the date on which the ballot measure was approved by the voters.” In so doing, the Legislature was attempting to subvert the purpose of Article XIII B, section 6, by allowing the state to shift the financial responsibility for carrying out mandated activities that the commission had previously found to be the obligation of the state, to local entities.

The County agrees that legislation enacted pursuant to a ballot measure that imposes new obligations or modifies existing obligations on local entities are not reimbursable mandates imposed by the state to the extent of such new obligations or the modifications increase existing obligations. The County also agrees that legislation enacted subsequent to the adoption of a ballot measure by the voters that is necessary to implement the provisions of the ballot measure, should also not be reimbursable.

The County does not agree with the state's unconstitutional attempt to destroy local entities' constitutional right to reimbursement by legislative fiat. Because Section 17556(f) purports to apply to activities that were found by the commission to be reimbursable mandates pursuant to Article XIII B, Section 6, before the adoption of the ballot measure, the application of Section 17556(f) to the facts of this case, would violate the purpose of section 6 and is therefore unconstitutional.

The Legislature's Definition of "Subsequent Change in the Law" Violates Article XIII B, Section 6 of the California Constitution

Similarly, the definition of what constitutes a "subsequent change in the law" as set forth in Section 17570 is overbroad and, as applied in this case, violates the purpose of Article XIII B, Section 6.

Section 17570 requires a showing that the state's constitutionally mandated obligation to reimburse local entities "has been modified based on a subsequent change in the law." The definition of what constitutes a subsequent change requires a finding that an incurred cost "is not a cost mandated by the state pursuant to Section 17556." As discussed above, the exception relied upon by the DOF is the ballot measure exception contained in Section 17556(f).

Not only would the application of the exception contained in Section 17556(f) to previously existing mandates violate Article XIII, Section 6, so would its application to statutory provisions contained in ballot measures that make no substantive changes to existing law, but are merely included in the ballot measure in order to comply with Article IV, Section 9. The consequences of such an interpretation would render the provisions in Section 17570 requiring an actual change in the law superfluous and usurp the commission's ability to exercise its judicial discretion in making the factual finding that there has been a subsequent change in the law.

The inclusion of statutory provisions, the language of which have not been changed, within the definition of what constitutes a subsequent change in the law simply because the statutory provisions are included in a ballot measure in compliance with Article IV, Section 9, violates the purpose of Article XIII, Section 6, by allowing the state to shift to local entities what were previously found by the commission to be reimbursable costs.

Conclusion

The commission can only adopt a new test claim decision upon a showing that the state's liability for that test claim under the Constitution "has been modified based on a subsequent change in the law." The DOF has failed to meet its burden of proof by demonstrating the existence of "... a subsequent change in law ... *material to the prior test claim decision* that" modified the state's liability pursuant to Article XIII B, Section 6. In addition, the referenced language in Sections 17556(f) and 17570, as applied in this case, violate the purpose of Article XIII B, Section 6, and are therefore unconstitutional. For the foregoing reasons, the DOF's Request should be denied.

Declaration

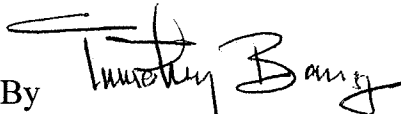
I, Timothy Barry declare that I am employed as a Senior Deputy County Counsel for the County of San Diego; that I am familiar with the facts and issues presented in this matter; and that I am authorized to make this declaration on behalf of the County of San Diego.

I further certify under penalty of perjury that the facts set forth in the foregoing comments and the attachment hereto are true and correct to the best of my own knowledge except as to matters stated on information and belief and as to those matters, I believe them to be true.

Executed this 27th day of March, in San Diego, California.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By 

TIMOTHY BARRY, Senior Deputy

TMB:nb

13-90066

cc: Ms. Laura Arnold, Deputy Public Defender (C277)
Mr. John Rice, Deputy District Attorney (D447)
Mr. Ronald Lane, Deputy CAO, Public Safety Group (A65)
Ms. Tracy Sandoval, Deputy CAO, Auditor & Controller (A6)

| Welfare and Institutions Code Sections Containing Mandated Activities as they existed before SB 1128 and Jessica's Law | Welfare and Institutions Code Sections Containing Mandated Activities as amended by SB 1128 | Welfare and Institutions Code Sections Containing Mandated Activities as amended by Jessica's Law: |
|---|--|--|
| <p>6601. (a) ...</p> <p>(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.</p> <p>(j) The time limits set forth in this section shall not apply during the first year that this article is operative.</p> <p>6602. (a) A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing. Upon the commencement of the probable cause hearing, the person shall remain in custody pending the completion of the probable cause hearing. If the judge determines there is not probable cause, he or she shall dismiss the petition and any person subject to parole shall report to parole. If the judge determines that there is probable cause, the judge shall order that the person remain in custody in a secure facility until a trial is completed and shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections or other secure facility.</p> <p>(b) The probable cause hearing shall not be continued except upon a showing of good cause by the party requesting the continuance.</p> <p>(c) The court shall notify the State Department of Mental Health of the outcome of the probable cause hearing by forwarding to the department a copy of the minute order of the court within 15 days of the decision.</p> <p>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</p> | <p>6601. (a) ...</p> <p>(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and Rehabilitation. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.</p> <p>(j) No Change</p> <p>6602. Not Included - No Change</p> | <p>6601. (a) ...</p> <p>(i) No Change</p> <p>(j) No Change</p> <p>6602. Not Included - No Change</p> <p>6603. Not Included - No Change</p> |

| Welfare and Institutions Code Sections Containing Mandated Activities as they existed before SB 1128 and Jessica's Law | Welfare and Institutions Code Sections Containing Mandated Activities as amended by SB 1128 | Welfare and Institutions Code Sections Containing Mandated Activities as amended by Jessica's Law: |
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| <p>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.</p> <p>(b) The attorney petitioning for commitment under this article shall have the right to demand that the trial be before a jury.</p> <p>(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 Mental Health 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 Mental Health to perform replacement evaluations. When a request is made for updated or replacement evaluations, the State Department of Mental Health 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 Mental Health shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601.</p> <p>(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 Mental Health to perform evaluations regarding sexually violent predators as a result of any of the following:</p> <p>(A) The evaluator has failed to adhere to the protocol of the State Department of Mental Health.</p> <p>(B) The evaluator's license has been suspended or revoked.</p> <p>(C) The evaluator is unavailable pursuant to Section 240 of the Evidence Code.</p> <p>(d) Nothing in this section shall prevent the defense from</p> | | |

| Welfare and Institutions Code Sections Containing Mandated Activities as they existed before SB 1128 and Jessica's Law <small>presenting otherwise relevant and admissible evidence.</small> | Welfare and Institutions Code Sections Containing Mandated Activities as amended by SB 1128 | Welfare and Institutions Code Sections Containing Mandated Activities as amended by Jessica's Law: |
|--|--|---|
| <p>(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.</p> <p>(f) A unanimous verdict shall be required in any jury trial.</p> <p>(g) The court shall notify the State Department of Mental Health of the outcome of the trial by forwarding to the department a copy of the minute order of the court within 72 hours of the decision.</p> <p>(h) Nothing in this section shall limit any legal or equitable right that a person may have to request DNA testing.</p> | <p>6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for a two-year term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health and the person shall not be kept in custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for extended commitment pursuant to subdivision (c) of Section 6605. Time spent on conditional release shall not count toward the term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections and Rehabilitation.</p> | <p>6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for a two-year <i>in indeterminate</i> term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health, and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for extended commitment pursuant to subdivision (c) of Section 6605. Time spent on conditional release shall not count toward the term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections and Rehabilitation.</p> |
| <p>6605. (a)</p> <p>(b) The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for</p> | <p>6605. (a)</p> <p>(b) No Change</p> | <p>6605. (a)</p> <p>(b) The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for</p> |

| Welfare and Institutions Code Sections Containing Mandated Activities as they existed before SB 1128 and Jessica's Law | Welfare and Institutions Code Sections Containing Mandated Activities as amended by SB 1128 | Welfare and Institutions Code Sections Containing Mandated Activities as amended by Jessica's Law: |
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| <p>conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing.</p> <p>(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.</p> <p>(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (1) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged. The committed person's failure to engage in treatment shall be considered evidence that his or her condition has not changed, for purposes of any court instructed. Completion of treatment programs shall be a condition of release.</p> | <p>(c) No Change</p> <p>(d) No Change</p> | <p>court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing. If the Department of Mental Health determines that either: (1) the person's condition has so changed that the person no longer meets the definition of a sexually violent predator, or (2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall order a show cause hearing at which the court can consider the petition and any accompanying documentation provided by the medical director, the prosecuting attorney or the committed person.</p> <p>(c) No Change</p> <p>(d) No Change</p> |

| Welfare and Institutions Code Sections Containing Mandated Activities as they existed before SB 1128 and Jessica's Law | Welfare and Institutions Code Sections Containing Mandated Activities as amended by SB 1128 | Welfare and Institutions Code Sections Containing Mandated Activities as amended by Jessica's Law: |
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| <p>6608.</p> <p>(a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release and subsequent unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.</p> <p>(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person and the Director of Mental Health at least 15 court days before the hearing date.</p> <p>(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.</p> <p>(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from</p> | <p>6608. Not Included - No Change</p> | <p>6608.</p> <p>(a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release and subsequent or an unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.</p> <p>(b) No Change</p> <p>(c) No Change</p> <p>(d) No Change</p> |

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