STATE OF CALIFORNIA--HEALTH AND WELFARE AGENCY PETE WILSON, GOVERNOR

DEPARTMENT OF MENTAL HEALTH
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October 30, 1996

DMH INFORMATION NOTICE NO.: 96-12

TO: LOCAL MENTAL HEALTH PROGRAM DIRECTORS
LOCAL MENTAL HEALTH PROGRAM CHIEFS
LOCAL MENTAL HEALTH ADMINISTRATORS
COUNTY ADMINISTRATIVE OFFICERS
CHAIRPERSONS, LOCAL MENTAL HEALTH BOARDS

SUBJECT: AB 3130 AND SB 2161 (WELFARE AND INSTITUTIONS CODE SECTION 6600 CIVIL COMMITMENTS)

This notice provides information about two recent bills that have been chaptered into law that have made changes in the Welfare and Institutions Code (WIC) Section 6600 civil commitment for sex offenders.

AB 3130 (Chapter 462, Statutes of 1996) amends Section 6600 et seq. of the WIC and related Penal Code sections to include the following as prior sexually violent offenses for purposes of this commitment: a conviction of a qualifying offense prior to July 1977, a conviction resulting in a finding that the person was a mentally disordered sex offender, a conviction in another state, or a finding of not guilty by reason of insanity.

This bill extends existing waivers of civil or criminal liability to the Board of Prison Terms and their staff and Department of Mental Health contractors for the acts of those persons committed. It also requires notification to local law enforcement upon certain community placements or unconditional release of persons who had previously been committed as sexually violent predators (SVPs); includes victimization of casual acquaintances in the definition of "predatory"; expressly authorizes outpatient treatment; allows an urgency review if a candidate's parole date is imminent; and clarifies that an SVP commitment does not affect the term of parole supervision. As an urgency statute, AB 3130 took effect on September 12, 1996.

SB 2161 (Chapter 461, Statutes of 1996) augments the WIC SVP provisions. It clarifies that persons who have committed a specified sex offense(s) upon a child under the age of 14 years may be referred to the Department of Mental Health for evaluation as an SVP. It also provides that a person who is required to register with local law enforcement as a sex offender would be relieved of that duty upon receipt of a certificate of rehabilitation only if he or she is no longer in custody, on parole or on probation. SB 2161 will take effect on January 1, 1997.

Copies of the chaptered legislation are enclosed for your information. If you have any questions regarding this legislation, please contact Robert Florida, Chief, Forensic Services, at (916) 654-1471.

STEPHEN W. MAYBERG, Ph. D.
Director

Enclosures

cc: California Mental Health Planning Council
Chief, Technical Assistance & Training
Forensic Coordinators
District Attorneys
Superior Court Judges
Public Defenders
Sheriffs
Police Chiefs

Assembly Bill No. 3130

CHAPTER 462

An act to amend Sections 1600, 1618, and 3000 of the Penal Code, and to amend Sections 6600, 6601, and 6601.5 of, and to add Sections 6609, 6609.1, 6609.2, and 6609.3 to, the Welfare and Institutions Code, relating to sexually violent predators, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 12, 1996. Filed with Secretary of State September 13, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3130, Boland. Sexually violent predators.

(1) Under existing law, any person committed to a state hospital pursuant to a plea of not guilty by reason of insanity is authorized to be placed on outpatient status.

This bill would authorize a person committed as a sexually violent predator to be placed on outpatient status.

(2) Existing law provides a waiver of civil and criminal liability to administrators and staff of the Forensic Conditional Release Program and to employees of the State Department of Mental Health for any criminal acts committed by persons on parole or judicial commitment status who receive supervision or treatment.

This bill would extend that waiver of liability to the Board of Prison Terms for persons who are considered for placement under a hold by the board.

The bill also would provide that any finding that a person is a sexually violent predator shall not toll, discharge, or otherwise affect that person's period of parole.

(3) Existing law provides for the civil commitment of sexually violent predators. A sexually violent predator is defined as a person who has been convicted of a sexually violent offense against 2 or more victims for which he or she received a determinate prison sentence and who has a diagnosed mental disorder that makes the person a danger to the health or safety of others.

This bill would revise the definition of a sexually violent offense for purposes of this definition of sexually violent predator.

Existing law defines "predatory," for purposes of the provisions governing sexually violent predators, as an act directed toward a stranger or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

This bill would add to that definition an act directed at a person of casual acquaintance with whom no substantial relationship exists.

(4) Under existing law, when the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director is required, at least 6 months prior to the individual's scheduled release date, to refer the person for an evaluation by the State Department of Mental Health.

This bill would authorize the Director of Corrections to refer a person for this evaluation at a time less than 6 months prior to the release date if the inmate was received with less than 9 months to serve or if the release date is modified by judicial or administrative action.

(5) Existing law provides for a hearing procedure to determine whether there is probable cause to believe that a person who is the subject of a petition for civil commitment as a sexually violent predator is likely to engage in sexually violent predatory criminal behavior upon his or her release from prison.

This bill would provide that, if an inmate's parole or temporary parole hold will expire before a probable cause hearing is conducted, the agency bringing the petition may request an urgency review.

(6) Under existing law, whenever any inmate in a state prison who is serving a term for committing a violent felony, the paroling authority is required to notify the sheriff or the chief of police, or both, and the district attorney who has jurisdiction over the community into which the person is scheduled to be released. The notice is required to be given 15 days prior to release, or, if release is to a county other than where he or she was committed, at least 45 days prior to the release. Those agencies have 15 days from receipt of notice to provide written comment to the department regarding the impending release. Those time limits are not applicable where the release date is advanced by a judicial or administrative procedure.

Existing law also requires the sheriff or chief of police to notify certain persons, including victims and witnesses, and authorizes notice to any other appropriate person, upon the pending release of a violent felon.

This bill would make all these provisions applicable to any person who was committed as a sexually violent predator, and would require the State Department of Mental Health to provide certain identifying information concerning sexually violent predators to local law enforcement agencies, upon request. By imposing additional duties on local law enforcement agencies, this bill would impose a state-mandated local program.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims

Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 1600 of the Penal Code is amended to read:

1600. Any person committed to a state hospital or other treatment facility under the provisions of Section 1026, or Chapter 6 (commencing with Section 1367) of Title 10 of this code, or Section 6316 or 6321 of the Welfare and Institutions Code may be placed on outpatient status from that commitment subject to the procedures and provisions of this title, except that a developmentally disabled person may be placed on outpatient status from that commitment under the provisions of this title as modified by Section 1370.4. Any person committed as a sexually violent predator under the provisions of Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code may be placed on outpatient status from that commitment in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

SEC. 2. Section 1618 of the Penal Code is amended to read:

1618. The administrators and the supervision and treatment staff of the Forensic Conditional Release Program shall not be held criminally or civilly liable for any criminal acts committed by the persons on parole or judicial commitment status who receive supervision or treatment. This waiver of liability shall apply to employees of the State Department of Mental Health, the Board of Prison Terms, and the agencies or persons under contract to those agencies, who provide screening, clinical evaluation, supervision, or treatment to mentally ill parolees or persons under judicial commitment or considered for placement under a hold by the Board of Prison Terms.

SEC. 3. Section 3000 of the Penal Code is amended to read:

3000. (a) (1) The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the

transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.

(2) The Legislature finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of Prison Terms to execute its duties with respect to parole functions for which the board is responsible.

(3) The Legislature finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

(4) Any finding made pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, that a person is a sexually violent predator shall not toll, discharge, or otherwise affect that person's period of parole.

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931, if applicable, the inmate shall be released on parole for a period not exceeding three years, unless the parole authority for good cause waives parole and discharges the inmate from custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall be also applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(4) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1) or (2), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1) and (2) shall be computed from the date of initial parole and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period

of parole unless the prisoner is found not guilty of the parole violation. However, in no case, except as provided in Section 3064, may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole, and, except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole.

(5) The Department of Corrections shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections or the Board of Prison Terms may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(6) For purposes of this chapter, the Board of Prison Terms shall be considered the parole authority.

(7) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Prison Terms, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

SEC. 4. Section 6600 of the Welfare and Institutions Code is amended to read:

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

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

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

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

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

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

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

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

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

SEC. 5. Section 6601 of the Welfare and Institutions Code, as amended by Chapter 4 of the Statutes of 1996, is amended to read:

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

individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the director may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder such that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Director of Corrections or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

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

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

SEC. 6. Section 6601.5 of the Welfare and Institutions Code, as added by Chapter 4 of the Statutes of 1996, is amended to read:

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

(b) This section shall remain in effect only until January 1, 1998, and as of that date is repealed.

SEC. 7. Section 6609 is added to the Welfare and Institutions Code, to read:

6609. Within 10 days of a request made by the chief of police of a city or the sheriff of a county, the State Department of Mental Health shall provide the following information concerning each person committed as a sexually violent predator who is receiving outpatient care in a conditional release program in that city or county: name, address, date of commitment, county from which committed, date of placement in the conditional release program, fingerprints, and a glossy photograph no smaller than $3^1/_8 \times 3^1/_8$ inches in size, or clear copies of the fingerprints and photograph.

SEC. 8. Section 6609.1 is added to the Welfare and Institutions Code, to read:

6609.1. (a) When any person committed as a sexually violent predator is going to be unconditionally released, the State Department of Mental Health shall notify the sheriff or chief of police, or both, and the district attorney, who has jurisdiction over the community in which the person is scheduled to be released. Except as provided in subdivision (b), the notice shall be given at least 15 days prior to the scheduled release date and shall include the name of the person who is scheduled to be released, whether or not the person is required to register with law enforcement, and the community in which the person will reside.

(b) When a person committed as a sexually violent predator is scheduled to be released to a county other than the county from which he or she was committed, the State Department of Mental Health shall provide written notice of that release to the sheriff or police chief, or both, and to the district attorney, who has jurisdiction over the community in which the inmate is scheduled to be released. The notice shall be made at least 45 days prior to the scheduled

release date and shall include the name of the person who is scheduled to be released, whether or not the person is required to register with local law enforcement, and the community in which the person will reside.

Those agencies receiving the notice referred to in this subdivision shall have 15 days from receipt of the notice to provide written comment to the department regarding the impending release. Those comments shall be considered by the department, which may modify its decision regarding the community in which the person is scheduled to be released, based on those comments.

(c) If the court orders the immediate release of a sexually violent predator, the department shall notify the sheriff or chief of police, or both, and the district attorney, who has jurisdiction over the community in which the person is scheduled to be released at the time of release.

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

(e) The time limits imposed by this section are not applicable where the release date of a sexually violent predator has been advanced by a judicial or administrative process or procedure that could not have reasonably been anticipated by the State Department of Mental Health and where, as the result of the time adjustments, there is less than 30 days remaining on the commitment before the inmate's release, but notice shall be given as soon as practicable. In no case shall notice required by this section to the appropriate agency be later than the day of release. If, after the 45-day notice is given to law enforcement and to the district attorney relating to an out-of-county placement, there is change of county placement, notice to the ultimate county of placement shall be made upon the determination of the county of placement.

SEC. 9. Section 6609.2 is added to the Welfare and Institutions Code, to read:

6609.2. (a) When any sheriff or chief of police is notified of the pending release of a person committed as a sexually violent predator, that sheriff or chief of police may notify any person designated by the sheriff or chief of police as an appropriate recipient of the notice.

(b) A law enforcement official authorized to provide notice pursuant to this section, and the public agency or entity employing the law enforcement official, shall not be liable for providing or failing to provide notice pursuant to this section.

SEC. 10. Section 6609.3 is added to the Welfare and Institutions Code, to read:

6609.3. At the time a notice is sent pursuant to subdivision (a) of Section 6609.1, the sheriff, chief of police, or district attorney notified of the release shall also send a notice to persons described in Section 679.03 of the Penal Code who have requested a notice, informing those persons of the fact that the person who committed the sexually

violent offense is scheduled to be released and specifying the proposed date of release. Notice of the community in which the person is scheduled to reside shall also be given only if it is (1) in the county of residence of a witness, victim, or family member of a victim who has requested notice, or (2) within 25 miles of the actual residence of a witness, victim, or family member of a victim who has requested notice. If, after providing the witness, victim, or next of kin with the notice, there is any change in the release date or the community in which the person is to reside, the board shall provide the witness, victim, or next of kin with the revised information.

In order to be entitled to receive the notice set forth in this section, the requesting party shall keep the sheriff, chief of police, and district attorney who were notified under Section 679.03 of the Penal Code, informed of his or her current mailing address.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide immediate protection to the public from persons who may be sexually violent predators and may be subject to commitment in the near future, it is necessary that this act take effect immediately.

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Senate Bill No. 2161

CHAPTER 461

An act to amend Section 290.5 of the Penal Code, and to add Section 6600.1 to the Welfare and Institutions Code, relating to sex offenders.

[Approved by Governor September 12, 1996. Filed with Secretary of State September 13, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2161, Leslie. Sex offenders.

(1) Existing law authorizes a person who is required to register annually with local law enforcement officials as a sex offender to petition for a certificate of rehabilitation and pardon. Upon obtaining a certificate of rehabilitation, that person is relieved of any further duty to register as a sex offender. Failure to register when required is a misdemeanor.

This bill would provide that the person is relieved of any further duty to register upon receipt of the certificate of rehabilitation if he or she is not in custody, on parole, or on probation.

(2) Existing law specifies procedures for the civil commitment of sexually violent predators. Pursuant to these procedures, a person who is in custody under the jurisdiction of the Department of Corrections may be referred to the State Department of Mental Health for an evaluation as to whether the person may be a sexually violent predator. For these purposes, existing law defines a "sexually violent offense" as one of specified sex offenses committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury upon the victim or another person.

This bill would add specified sex offenses upon a child under the age of 14 years to that list of offenses.

(3) This bill would incorporate additional changes in Section 290.5 of the Penal Code, proposed by AB 1901, to be operative only if AB 1901 and this bill are both chaptered and become effective on or before January 1, 1997, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 290.5 of the Penal Code is amended to read:

290.5. A person required to register under Section 290 may initiate a proceeding under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of this code, and upon obtaining a certificate of rehabilitation, shall be relieved of any further duty to register under Section 290 if not in custody, on parole, or on probation. This certificate shall not relieve a petitioner of the duty to

register under Section 290 for any offense subject to that section of which he or she is convicted in the future.

SEC. 2. Section 290.5 of the Penal Code is amended to read:

290.5. (a) A person required to register under Section 290 may initiate a proceeding under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, and, except persons described in paragraph (1) of subdivision (a) of Section 290.4 or paragraph (2) of subdivision (g) of Section 290, upon obtaining a certificate of rehabilitation, shall be relieved of any further duty to register under Section 290 if not in custody, on parole, or on probation. This certificate shall not relieve persons described in paragraph (1) of subdivision (a) of Section 290.4 or paragraph (2) of subdivision (g) of Section 290 of the duty to register under Section 290 and shall not relieve a petitioner of the duty to register under Section 290 for any offense subject to that section of which he or she is convicted in the future.

(b) (1) Except as provided in paragraphs (2) and (3), a person described in paragraph (1) of subdivision (a) of Section 290.4 or paragraph (2) of subdivision (g) of Section 290 shall not be relieved of the duty to register until that person has obtained a full pardon as provided in Chapter 1 (commencing with Section 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of Part 3.

(2) This subdivision does not apply to misdemeanor violations of Section 647.6.

(3) The court, upon granting a petition for a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, may relieve a person of the duty to register under Section 290 for a violation of Section 288 or 288.5, provided that the person was granted probation pursuant to subdivision (c) of Section 1203.066, has complied with the provisions of Section 290 for a continuous period of at least 10 years immediately preceding the filing of the petition, and has not been convicted of a felony during that period.

SEC. 3. Section 6600.1 is added to the Welfare and Institutions Code, to read:

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

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

SEC. 4. Section 2 of this bill incorporates amendments to Section 290.5 of the Penal Code proposed by both this bill and A B 1901. It shall become operative if (1) both bills are enacted and become effective

on or before January 1, 1997, (2) each bill amends Section 290.5 of the Penal Code, and (3) this bill is enacted after AB 1901, in which case Section 290.5 of the Penal Code, as amended by AB 1901, shall remain operative only until the operative date of this bill, at which time Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative.

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