

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Criminal Law Advisory Committee
Hon. Steven Z. Perren, Chair
Joshua Weinstein, Committee Counsel, 415-865-7688,
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DATE: August 23, 2004

SUBJECT: Sexually Violent Predator Cases: Standardized Commitment Forms
(approve forms MC-280 and MC-281) (Action Required)

Issue Statement

Under Welfare and Institutions Code section 6600 et seq., sexually violent predators may be committed to the Department of Mental Health for an initial two-year period and then subsequent two-year extended commitments. The Department of Mental Health suggested implementation of standardized commitment forms, as current commitment orders vary significantly and may not include all necessary information.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2005, approve new, optional forms MC-280, *Order for Commitment* and MC-281, *Order for Extended Commitment* to provide uniform orders for commitment in sexually violent predator cases.

The text of the proposed forms is attached at pages 3 and 4.

Rationale for Recommendation

The proposed forms would provide courts with standardized orders for the initial and subsequent commitment in sexually violent predator cases under Welfare and Institutions Code section 6600 et seq. Form MC-280, *Order for Commitment* would allow courts to list the pertinent information for the commitment, including the respondent's prior convictions, the commitment facility, the date of commitment, and the date the commitment terminates. The information listed on form MC-281, *Order for Extended Commitment* would similarly include the commitment facility and the date the extended commitment terminates.

Currently, there are no standardized forms for these commitments and the Department of Mental Health receives varying orders, making it difficult to track commitments and re-commitments. The proposed optional forms would help alleviate that burden.

Alternative Actions Considered

Because the Judicial Council is not required to implement forms in this area, the committee considered not proposing approval of the forms. It concluded that the forms should be approved because they would provide uniformity and ease the burden on the Department of Mental Health.

Comments From Interested Parties

The proposal was circulated for comment during the spring 2004 comment cycle. Four comments were received, three of which agreed with the proposal and one that agreed if the proposal was modified. The commentator who agreed if modified suggested that the subsequent commitment form be modified to clarify that the subsequent commitment finding must be made by a judge or jury after trial. The suggestion is well taken because Welfare and Institutions Code section 6604 provides for a full trial for the initial and subsequent commitment, and the committee modified the proposed form as suggested.

A chart summarizing the comments is attached at pages 5–7.

Implementation Requirements and Costs

Implementation costs for the forms would be limited to the cost of copying forms.

Attachments

SPR04-17
Sexually Violent Predatory Commitment Forms
(approve forms CR-295 and CR-296)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Linda Finn Deputy Executive Officer Superior Court of California, County of Ventura Ventura	A	N	Agree with proposed changes.	
2.	B. Gilbert Court Operations Supervisor Superior Court of California, County of Butte Oroville	A	N	Agree with proposed changes. Then all superior courts would be using the same form.	
3.	Ms. Kim Hubbard President Orange County Bar Association Irvine	A	N	Agree with proposed changes.	
4.	Sharon Ngim Staff Liaison to the Standing Committee on the Delivery of Legal Services The State Bar of California	AM		We support Proposed Form CR-295 (Order for Commitment [Welf. & Inst. Code, § 6604]). Proposed Form CR-296 (Order for Extended Commitment [Welf. & Inst. Code § 6604]) appears to permit the court to recommit the offender based solely upon <i>ex parte</i> review of “medical records” submitted to the court. However, Welfare and Institutions Code section 6604 requires a full hearing and a determination beyond a reasonable doubt that the offender remains a sexually violent predator before an extended commitment may be implemented: ...If the court or jury determines that the person is a sexually violent predator, the person	Agree. Form clarified.

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				<p>shall be committed for two years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for extended commitment under this article or unless the term of commitment changes pursuant to subdivision (e) of Section 6605. (Welf. & Inst. Code, § 6604, emphasis added.)</p> <p>The reference here is to article 4, which encompasses Welfare & Institutions Code Sections 6600 through 6609.3 Section 6603 affords a person subject to article 4 the right to a jury trial, assistance of counsel, the right to retain experts, and access to all relevant medical and psychological records and reports. Section 6604 requires that the court or jury find beyond a reasonable doubt that the person is a sexually violent predator. These standards apply equally to original commitments and extended commitments. (See also Section 6605 [post-commitment examinations; petition for conditional release; annual notice; hearing to show cause; burden of proof; term of commitment; request for review by Department of Mental Health]).</p> <p>We suggest that Form CR-296 be reformatted to</p>	

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				mirror the language contained in Form CR-295, requiring a true finding beyond a reasonable doubt following the hearing required by section 6604 before a recommitment may be ordered.	