



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-052

For business meeting on October 1, 2021

Title

Rules and Forms: Commitment Orders for Sexually Violent Predators

Agenda Item Type

Action Required

Effective Date

January 1, 2022

Rules, Forms, Standards, or Statutes Affected

Revise form CR-173; revoke form CR 174

Date of Report

August 2, 2021

Recommended by

Criminal Law Advisory Committee
Brian M. Hoffstadt, Chair

Contact

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Executive Summary

The Criminal Law Advisory Committee recommends revising *Order for Commitment* (form CR-173) and revoking *Order for Extended Commitment* (form CR-174) to incorporate changes to the statutes governing sexually violent predator proceedings (Welf. & Inst. Code, § 6600 et seq.), replace gender-specific pronouns, and incorporate revisions for procedural efficiency, accuracy, and clarity.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2022:

1. Revise *Order for Commitment* (form CR-173) to:
 - a. Update the findings section to require one or more convictions of a qualifying offense to reflect Welfare and Institutions Code section 6600;

- b. Modify the reference to sexually violent predatory criminal behavior to exclude the term “predatory,” to reflect the statutory language of Welfare and Institutions Code section 6600;
 - c. Replace references to the California Department of Mental Health with the California Department of State Hospitals, to reflect the transfer of duties regarding sexually violent predators made by Assembly Bill 1470 (Stats. 2012, ch. 24);
 - d. Replace references to the two-year custody limit with an indeterminate term, and eliminate references to extended commitment requirements, to reflect statutory changes to custody terms made by Senate Bill 1128 (Stats. 2006, ch. 337) and the Sexual Predator Punishment and Control Act (Proposition 83);
 - e. Replace gender-specific pronouns;
 - f. Identify the county of domicile for purposes of discharge under Welfare and Institutions Code section 6608.5, to promote court efficiencies by having the identification occur at an earlier stage of the proceedings;
 - g. Eliminate references to confinement at a specific state hospital, to reflect that some respondents may be released to community treatment under the custody of the Department of State Hospitals; and
 - h. Order a specific entity to transport the respondent, to provide clarity about the agency responsible for transportation; and
2. Revoke *Order for Extended Commitment* (form CR-174) to reflect statutory changes to custody terms made by Senate Bill 1128 and Proposition 83.

The revised and revoked forms are attached at pages 5–6.

Relevant Previous Council Action

The Judicial Council approved two optional forms, *Order for Commitment* (form CR-173) and *Order for Extended Commitment* (form CR-174), effective January 1, 2005, to provide increased uniformity of commitment forms for people determined to be sexually violent predators under the Welfare and Institutions Code. The forms were most recently amended, effective September 1, 2018, for renumbering.

Analysis/Rationale

Order for Commitment (form CR-173) has not been substantively revised to incorporate statutory changes to Welfare and Institutions Code section 6600 et seq. by Senate Bill 1128, Prop. 83, and Assembly Bill 1470. This proposal would rectify that matter. The committee also recommends replacing gender-specific pronouns and revising the form for procedural efficiency, accuracy, and clarity.

The proposal would also revoke *Order for Extended Commitment* (form CR-174). A prior version of Welfare and Institutions Code section 6604 stated that if a person was determined by the court or jury to be a sexually violent predator, that person must be committed for two years to the custody of the Department of State Hospitals and could not be kept in actual custody longer than two years unless a subsequent extended commitment was obtained from the court. SB 1128 and Prop. 83 amended section 6604 to change the two-year custody limit to an indeterminate term and deleted the extended commitment requirement, rendering the form unnecessary.

Policy implications

The revisions are recommended so that the forms reflect existing statutory provisions and are accurate and useful. No further policy implications were discussed by the committee.

Comments

The Criminal Law Advisory Committee circulated the forms for public comment from April 15 through May 27, 2021, and received comments from two superior courts and one local bar association. Two commenters agreed with the proposal, and one commenter did not indicate a position but appeared to agree with the proposal.

Alternatives considered

Because the form revision and revocation are largely necessitated by statutory changes, the committee did not consider any alternatives to those revisions. The committee unanimously agreed on the revisions based on procedural efficiency, accuracy, and clarity and thought they were appropriate to recommend at the same time as the revisions based on statutory changes.

Fiscal and Operational Impacts

Two superior courts submitted comments regarding this proposal's operational impacts on courts. Expected costs are limited to training, case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Forms CR-173 and CR-174, at pages 5–6
2. Chart of comments, at pages 7–9
3. Link A: Welf. & Inst. Code, § 6600,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6600.&lawCode=WIC
4. Link B: Welf. & Inst. Code, § 6604,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6604.&lawCode=WIC
5. Link C: Welf. & Inst. Code, § 6608.5,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6608.5.&lawCode=WIC

6. Link D: Sen. Bill 1128 (Stats. 2006, ch. 337),
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200520060SB1128
7. Link E: Assem. Bill 1470 (Stats. 2012, ch. 24),
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120AB1470

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY <p style="text-align: center;">DRAFT Not approved by the Judicial Council</p>
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant:	
ORDER FOR COMMITMENT (Sexually Violent Predator)	CASE NUMBER:

1. After the trial in the above captioned matter on (date): _____ the allegations in the petition were found true beyond a reasonable doubt. At the trial, the ☐ court ☐ jury found
 - a. that the respondent has suffered one or more convictions for violations of (specify code sections): _____ and _____
 - b. that the respondent has a diagnosed mental disorder that makes the respondent a danger to the health and safety of others in that it is likely that respondent will engage in sexually violent criminal behavior; and
 - c. thus, that the respondent is a "sexually violent predator" as defined in Welfare and Institutions Code section 6600.
2. The court finds that the county of domicile for purposes of discharge under provisions of Welfare and Institutions Code section 6608.5 is the _____ county of: _____.

THEREFORE, THE COURT ORDERS

3. The respondent is to be committed to the custody of the California Department of State Hospitals for appropriate treatment under the provisions of Welfare and Institutions Code section 6604 for an indeterminate term commencing (date): _____
4. The respondent is to be transported immediately to the custody of the California Department of State Hospitals by (agency): _____

Date: _____

(JUDICIAL OFFICER)

- ## THE COURT ORDERS

- Date: _____
- _____
- (JUDICIAL OFFICER)

SPR21-08

Criminal Procedure: Commitment Orders for Sexually Violent Predators (CR-173 and revoke CR-174)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Superior Court of Orange County by Randy Montejano Courtroom Operations Supervisor	NI	<p>In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:</p> <ul style="list-style-type: none">Does the proposal appropriately address the stated purpose? <p>Yes, the proposal appropriately addresses the stated purpose.</p> <ul style="list-style-type: none">Would the proposal provide cost savings? If so, please quantify. <p>No cost savings would be realized as a result of these modifications, as the forms were primarily modified to capture recent legislative changes and to clean up the verbiage generally. There are no efficiencies being gained in the process.</p> <ul style="list-style-type: none">What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? <p>For Orange County, it would appear minor docket code modifications to capture the new verbiage regarding respondent transportation to the custody of the California Department of State Hospitals, as</p>	The committee appreciates the comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR21-08**Criminal Procedure: Commitment Orders for Sexually Violent Predators** (CR-173 and revoke CR-174)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>current codes are very specific as to the location. There would be subsequent minor procedure updates to capture this as well.</p> <ul style="list-style-type: none"> • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <p>Yes, this is adequate time as the modifications are not extensive.</p> <ul style="list-style-type: none"> • How well would this proposal work in courts of different sizes? <p>It would work well, as the changes are not extensive and do not appear to modify any existing processes.</p>	
2.	Superior Court of San Diego County by Michael Roddy Executive Officer	A	<ul style="list-style-type: none"> • Does the proposal appropriately address the stated purpose? <p>Yes.</p> <ul style="list-style-type: none"> • Would the proposal provide cost savings? <p>No.</p> <ul style="list-style-type: none"> • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management 	The committee appreciates the comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR21-08**Criminal Procedure: Commitment Orders for Sexually Violent Predators** (CR-173 and revoke CR-174)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>systems, or modifying case management systems?</p> <p>The changes proposed would not require staff training nor would there be changes to existing processes/procedures or the case management system. The San Diego Superior Court uses a local form “Order of Commitment” (CRM-152) and does not have a form it uses for extensions specific to Sexually Violent Predators.</p> <ul style="list-style-type: none"> • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <p>Yes.</p> <ul style="list-style-type: none"> • How well would this proposal work in courts of different sizes? <p>There should be no disparate impact between courts of different sizes.</p>	
3.	Orange County Bar Association by Larisa M. Dinsmoor President	A	No specific comment.	The committee appreciates the comment.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated