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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; MICHAEL O'CONNOR, Real Party in Interest.	B232295 (Los Angeles County Super. Ct. No. ZM017031)

ORIGINAL PROCEEDING. Petition for writ of mandate. Harold Shabo, Judge. Petition granted.

Steve Cooley, District Attorney, Irene Wakabayashi, Head Deputy District Attorney, Phyllis C. Asayama and Roberta Schwartz, Deputy District Attorneys for Petitioner.

Ronald L. Brown, Public Defender, Albert J. Menaster, Craig Osaki and Jack Weedin, Deputy Public Defenders for Real Party in Interest.

Kamala D. Harris, Attorney General, Julie Weng-Gutierrez, Senior Assistant Attorney General, Jennifer M. Kim and Tara L. Newman, Deputy Attorneys General, for Department of Mental Health as Amicus Curiae on behalf of The People.

Real party in interest Michael O'Connor's scheduled prison release date of January 5, 2011 was extended 45 days pursuant to Welfare and Institutions Code section 6601.3[1] and California Code of Regulations, title 15, section 2600.1, subdivision (d) (Regulation 2600.1(d)), to permit professionals at the California Department of Mental Health to complete evaluations to determine whether O'Connor met the criteria for confinement as a sexually violent predator (SVP). Based on the completed evaluations, the Los Angeles County District Attorney filed a petition on February 8, 2011 for commitment of O'Connor as an SVP. Respondent Los Angeles Superior Court granted O'Connor's motion to dismiss the petition and ordered O'Connor released from custody, finding there was not good cause within the meaning of section 6601.3, as amended effective January 1, 2011, to extend O'Connor's release date and O'Connor's ensuing unlawful custody was not attributable to a good faith mistake of fact or law under section 6601, subdivision (a)(2).

The People seek a writ of mandate directing the superior court to vacate its orders and to enter a new order reinstating the proceedings pursuant to the Sexually Violent Predator Act (SVPA) (§ 6600 et seq.). We agree with the superior court that the inability to complete O'Connor's evaluations because of increased workload and a shortage of professional staff due to California's ongoing budgetary crisis is not an "exigent circumstance" establishing good cause for a 45-day hold pursuant to section 6601.3, as amended. However, in the absence of either a prior judicial construction of that statute or an administrative repeal or judicial declaration that Regulation 2600.1(d) is invalid, the unlawful 45-day hold in this case was the result of a good faith mistake of law under section 6601, subdivision (a)(2); and dismissal of the petition was not justified. Accordingly, we grant the petition for writ of mandate and direct the superior court to vacate its order of March 30, 2011 dismissing the petition to have O'Connor declared an

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[1] Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

SVP and releasing him from custody and to enter a new and different order reinstating the petition.

PROCEDURES GOVERNING SVP COMMITMENTS

The SVPA authorizes the state to identify incarcerated individuals who suffer from mental disorders that predispose them to commit violent sexual crimes and to confine and treat them until they no longer threaten society. (*People v. Allen* (2008) 44 Cal.4th 843, 857; *Moore v. Superior Court* (2010) 50 Cal.4th 802, 814 ["[t]he SVPA targets a select group of convicted sex offenders whose mental disorders predispose them to commit sexually violent acts if released following punishment for their crimes"].) The process "begins when the secretary of the Department of Corrections and Rehabilitation determines that an individual in the custody of the department may be a sexually violent predator, and the secretary refers the individual to the State Department of Mental Health for an evaluation. If two evaluators concur that the individual meets the statutory criteria of a sexually violent predator, the Director of Mental Health shall request the county in which the person was convicted of the offense for which he or she is incarcerated to file a petition for commitment under the SVPA. (§ 6601.)" (*Allen,* at pp. 857-858; see *People v. McKee* (2010) 47 Cal.4th 1172, 1185-1187.) "If the county's SVP counsel (either the district attorney or county counsel, as designated by the county board of supervisors) concurs with the recommendation, a petition for commitment is filed in the trial court. ([§ 6601,]subd. (i).)" (*Moore,* at p. 816.)

The initial screening and referral of an inmate by the Department of Corrections and Rehabilitation to the Department of Mental Health for full evaluation must, in most instances, occur at least six months before the inmate's scheduled date for release from prison. (§ 6601, subds. (a)(1), (b); see *Moore v. Superior Court, supra*, 50 Cal.4th at p. 816.)[2] Once the inmate has been referred to the Department of Mental Health,

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[2] Although section 6601, subdivision (a)(1), directs the Secretary of the Department of Corrections and Rehabilitation to refer an individual he or she has determined may be an SVP for full evaluation by the Department of Mental Health within six months of the

section 6601, subdivisions (c) through (h), specify the procedures to be used by it to evaluate whether the inmate meets the criteria in section 6600 for an SVP, that is, "a person who has been convicted of a sexually violent offense against one or more victims 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." (§ 6600, subd. (a)(1).) Upon a showing of good cause, the Board of Parole Hearings,[3] a component of the Department of Corrections and Rehabilitation (Gov. Code, § 12838, subd. (a)), may order an inmate in the evaluation process held in custody for a period not to exceed 45 days beyond the person's scheduled release date. (§ 6601.3, subd. (a); see also former § 6601.3, as amended by Stats. 2000, ch. 41, § 1, p. 129.)

Prior to its amendment effective January 1, 2011, section 6601.3 did not define "good cause" for a 45-day hold. Regulation 2600.1(d), a regulation promulgated by the Board of Parole Hearings,[4] supplied the definition: "For purposes of this section, good cause to place a 45-day hold pursuant to Welfare and Institutions Code section 6601.3 exists when either the inmate or parolee in revoked status is found to meet all the following criteria: [¶] (1) Some evidence that the person committed a sexually violent offense by force, violence, duress, menace, or fear of immediate and unlawful bodily

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inmates release date, "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 administration action, the secretary 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." (*Ibid*.)

[3] Although the governing statutes refer to the Board of Prison Terms, that agency was abolished effective July 1, 2005, and replaced by the Board of Parole Hearings. (Pen. Code, § 5075, subd. (a); see *Lopez v. Superior Court* (2010) 50 Cal.4th 1055, 1060.) Penal Code section 5075, subdivision (a), also provides, "[A]ny reference to the Board of Prison Terms in this or any other code refers to the Board of Parole Hearings."

[4] Penal Code section 3052 vests the Board of Parole Hearings with "the power to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside the prison buildings and enclosures when eligible for parole."

injury on the victim or another person, . . . which resulted in a conviction or a finding of not guilty by reason of insanity . . . . [¶] . . . [¶] (2) Some evidence that the person is likely to engage in sexually violent predatory criminal behavior."

Senate Bill No. 1201 (2009-2010 Reg. Sess.) (Senate Bill 1201) added a new subdivision (b) to section 6601.3, to provide a statutory definition of the term "good cause," effective January 1, 2011. "For purposes of this section, good cause means circumstances where there is a recalculation of credits or a restoration of denied or lost credits, a resentencing by a court, the receipt of the prisoner into custody, or equivalent exigent circumstances which result in there being less than 45 days prior to the person's scheduled release date for the full evaluation described in subdivisions (c) to (i), inclusive, of Section 6601." (§ 6601.3, subd. (b); Stats. 2010, ch. 710, § 5.)

Once an SVP petition has been filed, "[i]f the trial court determines that the petition establishes '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 court shall order a trial to determine whether the person is a sexually violent predator. (§§ 6601.5, 6602.)[5] The individual 'shall be entitled to a trial by jury, to the assistance of counsel, to the right to retain experts or professional persons to perform an examination on his or her behalf, and to have access to all relevant medical and psychological records and reports.' (§ 6603, subd. (a).) If the individual is indigent, the court shall appoint counsel to assist the individual in obtaining an expert evaluation and expert assistance at trial. (*Ibid.*) To secure the individual's commitment, the district attorney must prove beyond a reasonable doubt that the person is a sexually violent predator. (§ 6604.) When a jury decides the case, its verdict must be unanimous. (§ 6603, subd. (f).)" (*People v. Allen, supra,* 44 Cal.4th at pp. 857-858.)

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[5] The SVPA sets no limit on the time in which trial of the SVP petition must be commenced or concluded. (*People v. Superior Court* (*Small*) (2008) 159 Cal.App.4th 301, 309.) However, extensive pretrial delay raises serious procedural due process issues. (See *People v. Litmon* (2008) 162 Cal.App.4th 383, 399-406.)

As amended in 2006, the SVPA provides, if the trier of fact finds beyond a reasonable doubt the person is a sexually violent predator within the meaning of section 6600, "the person shall be committed for an indeterminate 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 . . . ." (§ 6604.)[6] A person committed as a sexually violent predator has the right pursuant to the SVPA to an annual medical review of his or her mental condition. (§ 6605, subd. (a).) If the report concludes the person no longer meets the definition of a sexually violent predator or conditional release is appropriate, the Department of Mental Health must authorize the person to petition the committing court for release (§ 6605, subd. (b)). If the court determines there is probable cause to believe the person's 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 activity, the court must set a hearing to determine whether the person's release or conditional release is appropriate. (§ 6605, subd. (c); *People v. McKee, supra,* 47 Cal.4th at p. 1187.)

This comprehensive statutory scheme, like other involuntary civil commitment procedures, "represents a delicate balancing of countervailing public and individual interests." (*People v. Allen* (2007) 42 Cal.4th 91, 98 [district attorney's untimely petition to extend commitment under the Mentally Disordered Offenders Act precluded trial court from extending the expired commitment].) The public has an obvious right to be safe and protected from identified dangerous and mentally ill ex-prisoners. (*Ibid.*) But commitment under the SVPA involves a significant limitation on the liberty interest of the affected defendants, who have a corollary right to be released from prison as soon as otherwise provided by law. (See *People v. Allen, supra*, 44 Cal.4th at p. 863 ["'[t]he California Legislature has recognized that the interests involved in civil commitment

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[6] Prior to the passage of Proposition 83, the Sexual Predator Punishment and Control Act: Jessica's Law, at the November 2006 general election, the SVPA had provided for an initial two-year commitment, subject to renewal upon petition by the People. (See former § 6604, as amended by Stats. 2000, ch. 420, § 3, pp. 3139-3140.)

proceedings are no less fundamental than those in criminal proceedings and that liberty is no less precious because forfeited in a civil proceeding than when taken as a consequence of a criminal conviction'"]; see also *Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 873-874.)

FACTUAL AND PROCEDURAL BACKGROUND

1. *O'Connor's SVP Evaluations*; *the 45-day Hold*

Following a court trial O'Connor was convicted on May 4, 1990 of 14 counts of committing lewd and lascivious acts upon a child under the age of 14 years involving two victims. (Pen. Code, § 288a.) He was sentenced to an aggregate state prison term of 34 years. O'Connor was received into the custody of the Department of Corrections and Rehabilitation on June 20, 1990. While in prison O'Connor has sustained numerous rules violations including possession of lewd sexual material involving minors and drawing pornographic sketches of children.

On April 8, 2010, nine months before his January 5, 2011 scheduled release date, O'Connor was initially screened by the Department of Corrections and Rehabilitation, which determined he met the criteria for an SVP. O'Connor's file was received by that department's classification services/sexually violent predator unit on April 21, 2010, but was not reviewed until November 1, 2010, more than six months later, because of staff shortages and the large number of other cases with earlier release dates. O'Connor's case was then delivered to the Board of Parole Hearings on November 2, 2010, which referred it to the Department of Mental Health on November 30, 2010 for a full evaluation pursuant to section 6601, subdivision (b).

On December 1, 2010 the Department of Mental Health completed its initial review of O'Connor. The Level II clinical screening was completed by Dr. Gangaw Zaw on December 15, 2010, who recommended further evaluation of O'Connor. According to the declaration of Karen Gillham, a staff services manager in the Department of Mental Health's sex offender commitment program, the delay in completing this Level II

screening was attributable to "the unavailability of clinicians and the number of cases on backlog also waiting for clinical screenings or evaluations."

Two required Level III evaluations pursuant to section 6601, subdivision (d), with Dr. Garrett Essres and Dr. Carolyn Murphy were scheduled on December 16, 2010 with report due dates of January 6, 2011. According to the Gillham declaration, "From November 22, 2010 through January 2, 2011, the [sexual offenders commitment program] experienced a shortage of clinicians available to perform clinical screenings and evaluations due to illness, vacation or other commitments. . . . [¶] . . . Between November 30, 2010, and January 6, 2011, (the dates when Mr. O'Connor was referred to the Department and when his second evaluation was submitted), there was a waiting list for evaluations to be scheduled based on release date and no other evaluators other than those assigned to Mr. O'Connor were available to perform evaluations."

The Department of Mental Health acknowledges it was aware of O'Connor's scheduled January 5, 2011 release date, but believed it could request a 45-day hold pursuant to section 6601.3 for the completion of the Level III evaluations "due to the inability to complete them by January 5, 2011 as a result of the shortage of evaluators and backlog of cases pending screening and evaluation." On January 4, 2011 the Department of Mental Health case manager transmitted an electronic request for a 45-day hold on O'Connor to the Board of Parole Hearings. Arthur C. Smith, a deputy commissioner with the Board of Parole Hearings, reviewed the request and granted it based on his authority to do so pursuant to Regulation 2600.1(d). Smith testified he was unaware at that time of the definition of good cause contained in newly effective section 6601.3, subdivision (b).

Dr. Essres submitted his evaluation report on December 30, 2010. Dr. Murphy submitted her report on January 7, 2011. Both evaluations concluded O'Connor met the criteria for an SVP. The Department of Mental Health then referred the case to the Los Angeles County District Attorney on January 7, 2011. On February 8, 2011 the district attorney filed a petition for commitment of O'Connor as an SVP.

2. *O'Connor's Motion To Dismiss the Petition*

On March 1, 2011 O'Connor, represented by a deputy public defender, moved to dismiss the SVP petition contending the 45-day hold was not justified by "good cause" as defined by section 6601.3, subdivision (b), effective January 1, 2011, and the filing of the petition after O'Conner's January 5, 2011 release date was not based on a good faith mistake of fact or law within the meaning of section 6601, subdivision (a)(2). The People did not initially file a formal opposition, but developed a chronology supported by exhibits describing the chain of events leading to the 45-day hold that were received into evidence at a hearing held on March 23, 2011 to consider the motion to dismiss. At that hearing the People also presented live testimony from three witnesses, including Karen Gillham and Arthur Smith, and the court heard argument of counsel. The People filed an opposition memorandum on March 28, 2011, and the court heard further argument on March 30, 2011.

At the conclusion of the hearing the superior court granted O'Connor's motion and ordered the SVP petition dismissed and O'Connor released from custody. With respect to the requirement of good faith as defined in section 6601.3, subdivision (b), the court ruled there were not exigent circumstances to justify the good cause request: "I consider the declaration of policy in 6601.3, the statute, to be a declaration of policy. It is that if there is a condition of a good faith request [for a 45-day hold], there must be exigent circumstances, and I don't think the exigent circumstances encompass a negligent failure to anticipate the workload that the department was facing. They were aware of the holidays coming up; they were aware of Christmas and New Year's Day and all those things, and that is what you take into consideration from an administrative point of view in adequately placing resources so nothing takes place so there won't be exigent circumstances. Now if someone is charged with the responsibility of completing an evaluation or doing a screening and they are having a heart attack, car crash or other thing that otherwise disables them from getting the evaluation completed within the time frame, sure that is an exigent circumstance and couldn't be anticipated. But I do think the

workload and all the rest of it, the holidays, all of that had to be taken into consideration by reasonably, well-planned administration of this SVP program. So, I think the exigent circumstances have to be beyond the department's control and something that the department couldn't anticipate would happen in this case . . . . [The] good faith exception applies in cases in which there is not an intentional or bad faith or malicious application of a 45-day hold and in cases in which the 45-day hold is not the product of the negligently based request. In this case, I'm inclined to find it is a negligently-based request."

The superior court similarly rejected the People's reliance on section 6601, subdivision (a)(2), which provides, "A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law." The court recognized that Regulation 2600.1(d) provides that good cause exists for a 45-day hold if there is some evidence of the qualifying prior sexually violent criminal offenses and some evidence the person is likely to engage again in violent sexual predatory conduct, but found that regulation "can't be applied in a way which allows the state to benefit from its own failure to anticipate the need for a proper allocation of resources . . . ." Accordingly, the court ruled under the circumstances of this case, the failure to comply with the express provisions of section 6601.3, subdivision (b), did not constitute a good faith mistake of fact or law.

The superior court stayed its March 30, 2011 order releasing O'Connor until April 15, 2011. On April 14, 2011 the People petitioned this court for a writ of mandate/prohibition to compel the superior court to vacate its March 30, 2011 orders with a request for an immediate stay of the order releasing O'Connor from custody. We issued a stay that same day and on April 28, 2011 issued an order to show cause as to why the requested relief should not be granted. On May 20, 2011 O'Connor filed his return to the petition, and on June 2, 2011 the People filed their reply.

CONTENTIONS

The People contend an unprecedented high volume of SVP referrals combined with the unavailability of qualified evaluators constituted exigent circumstances within the meaning of section 6601.3, subdivision (b), establishing good cause for the 45-day hold of O'Connor and, alternatively, even if extension of O'Connor's release date was unlawful, reliance by the Department of Mental Health and the Board of Parole Hearings on Regulation 2600.1(d) to grant the 45-day hold was a good faith mistake of law under section 6601, subdivision (a)(2).[7]

DISCUSSION

1. *The Chronic Backlog in SVP Evaluations Due to a Large Caseload and Limited Resources Does Not Constitute Exigent Circumstances Establishing Good Cause for a 45-Day Hold*

    a. *The state's difficulty in completing SVP evaluations prior to inmates' scheduled release dates*

As discussed, O'Connor was initially screened by the Department of Corrections and Rehabilitations more than six months before his case was referred to the Department of Mental Health for full evaluation pursuant to section 6601. Addressing the delay between O'Connor's initial screening and further review and referral by the Department of Corrections and Rehabilitations' classification services/sexually violent predator unit,

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[7] The People also contend O'Connor should have raised the lawfulness of the 45-day hold by an administrative appeal or a petition for writ of habeas corpus, rather than a motion to dismiss the SVPA proceedings. Although this argument may be technically correct, the record before the superior court and in this writ proceeding is sufficient to determine the lawfulness of O'Connor's extended custody and the propriety of dismissing the petition to determine whether he should be committed as an SVP. Accordingly, we exercise our discretion to decide the merits. (See *Lewis v. Superior Court* (2008) 169 Cal.App.4th 70, 77 ["'the label given a petition, action or other pleading is not determinative; rather, the true nature of a petition or cause of action is based on the facts alleged and remedy sought in the pleading'"]; *Neal v. State of California* (1960) 55 Cal.2d 11, 16 ["The proper remedy, if any, is habeas corpus. If the facts justify this remedy it is immaterial that petitioner had prayed for an inappropriate one."].)

Karen L. Vierra, the supervisor of that unit, explained her unit reviews for accuracy and completeness the initial screening forms and supporting documents for "yes" and "maybe" SVP cases and resolves any discrepancies before forwarding an inmate's file to the Board of Parole Hearings. During calendar year 2010 her unit received an average of 833 cases per month for review; the unit reviewed an average of 655 cases per month in the first half of the year, 832 cases per month in the second half of the year after an additional counselor was hired. The unit's caseload is processed in the order of the inmates' release dates.

The large SVP caseload at both the Department of Corrections and Rehabilitation and Department of Mental Health is due, in part, to the passage of Jessica's Law in November 2006, which caused a significant increase in SVP referrals. (See *People v. Superior Court* (*Small*) (2008) 159 Cal.App.4th 301, 305 [mental health professionals "have gone from performing an average of 50 SVP evaluations a month to an average of over 700" by January 2008].) According to information submitted by the Department of Mental Health in its amicus brief in support of the People's petition for a writ of mandate,[8] those average numbers increased even more in the second half of 2010, with a total of 4,764 referrals for SVP evaluations from the Department of Corrections and Rehabilitation during that six month period. It is estimated those numbers will grow to approximately 1500 referrals per month this year.

To handle this workload the Department of Mental Health has contracts with only 63 mental health professionals—every qualified clinician who had applied to the Department for the position—to perform clinical screenings and evaluations. Plans are currently ongoing to hire an additional 20 to 40 clinicians under an emergency no-bid contract procedure, but the success of the proposal is uncertain due to the shortage of

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[8] We grant the request for judicial notice filed concurrently with the amicus brief by the Department of Mental Health. Its September 7, 2011 supplemental request for judicial notice is denied.

interested professionals with the necessary qualifications and experience.[9] The general caseload problem was exacerbated during the period from November 22, 2010 to January 2, 2011, which included the Thanksgiving, Christmas and New Year's holidays, when an estimated 25 percent of the panel of clinicians indicated their unavailability to take assignments. As a result, although the Department of Mental Health typically expects its evaluators to conduct six to eight evaluations per month, Dr. Murphy, whose report on O'Connor was not completed until shortly after his January 5, 2011 scheduled release date, completed 55 clinical screenings and 15 full evaluations during the three weeks from December 16, 2010 to January 6, 2011.

b. *Delay due to staff shortages and large caseloads is not an "exigent circumstance" establishing good cause within the meaning of section 6601.3, subdivision* (*a*)

On January 4, 2011 when Deputy Commissioner Smith granted the Department of Mental Health's request for a 45-day hold on O'Connor, section 6601.3, subdivision (a), required "a showing of good cause" for such an extension of the scheduled release date; and subdivision (b) defined good cause to mean "circumstances where there is a recalculation of credits or a restoration of denied or lost credits, a resentencing by a court, the receipt of the prisoner into custody, or equivalent exigent circumstances which result in there being less than 45 days prior to the person's scheduled release date for the full [SVP] evaluation . . . ." We agree with the superior court that the ongoing difficulty of the Department of Corrections and Rehabilitation and the Department of Mental Health in processing and completing SVP screenings and evaluations in a timely manner due to

[9] The record before us does not indicate whether the compensation offered for this position is competitive with that available in the private sector for qualified professionals with the required experience or whether additional interest in the position could be generated by improving the compensation.

system-wide staff shortages and large caseloads is not good cause within the meaning of this statute.[10]

When originally added to the SVPA as an urgency "clean-up" provision shortly after the effective date of the SVPA itself, section 6601.3 contained no good cause requirement at all, authorizing the Board of Prison Terms (now the Board of Parole Hearings) to order any person referred to the Department of Mental Health for an SVP evaluation held for an additional 45 days "unless his or her scheduled date of release falls more than 45 days after referral." (Stats. 1996, ch. 4, § 2, p. 16;[11] see Stats. 1998, ch. 19, § 1, p. 145 [reenacting former § 6601.3 after Jan. 1, 1998 sunset provision].) Nonetheless, the justification for this provision, as articulated in a report to Governor Davis from the Department of Corrections urging him to sign the bill, was the impossibility of identifying and fully evaluating all possible SVPs prior to their release

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[10] Issues of statutory interpretation are questions of law subject to our independent or de novo review. (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 311; *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.) Our fundamental task is to ascertain the Legislature's intent and thereby effectuate the purpose of the statute. (*Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1147; *Smith v. Superior Court* (2006) 39 Cal.4th 77, 83.) "We begin with the statutory language because it is generally the most reliable indication of legislative intent." (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 888.) "If there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs." (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272; see also *Smith,* at p. 83.) "[W]e do not construe statutes in isolation, but rather read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.'" (*People v. Pieters* (1991) 52 Cal.3d 894, 899; see also *Stone Street Capital, LLC v. California State Lottery Com.* (2008) 165 Cal.App.4th 109, 118 ["[w]e presume that the Legislature, when enacting a statute, was aware of existing related laws and intended to maintain a consistent body of rules"].)

[11] The original version of section 6601.3 provided, "The Board of Prison terms may order that a person referred to the State Department of Mental Health pursuant to subdivision (b) of Section 6601 remain in custody for no more than 45 days for full evaluation pursuant to subdivisions (c) to (i), inclusive, of Section 6601, unless his or her scheduled date of release falls more than 45 days after referral." (Stats. 1996, ch. 4, § 2, p. 16.)

dates during the law's first year of operation and the fact "there will always be inmates whose release dates are advanced through judicial or administrative action so as to collapse the 6 month lead time, either before the process of referral has begun or before a probable cause determination can be made." (Dept. of Corrections, Enrolled Bill Report, Assem. Bill No. 1496 (1995-1996 Reg. Sess.) Jan. 25, 1996, p. 2; see also Assem. Com. on Public Safety, Analysis of Sen. Bill No. 536 (1997-1998 Reg. Sess.) July 8, 1997, p. 1 [legislation would continue in effect authorization for 45-day hold due to expire Jan. 1, 1998; 45-day extension of release date necessary "in those circumstances when the restoration of time credits to the person's term of imprisonment renders the normal time frames for SVP commitment impracticable"].)

The good cause requirement was added in 2000 by Senate Bill No. 451 (1999-2000 Reg. Sess.), which also eliminated the restriction on holding the inmate past his or her release date if that date fell more than 45 days after referral. (Stats. 2000, ch. 41, § 1, p. 129.)[12] The statute did not define "good cause." However, according to the analysis prepared for the Assembly Appropriations Committee, the purpose of the amendment was to "clarif[y] that an inmate referred to the SVP process may be detained 45 days beyond the scheduled release date, in order to cover situations in which an inmate's release date may be unexpectedly moved up, or when a parole revocation term allows insufficient time to complete the evaluation process." (Assem. Com. on Appropriations, Analysis of Sen. Bill No. 451 (1999-2000 Reg. Sess.) Apr. 12, 2000, pp. 1-2.)

The definition of good cause implicit in the 2000 amendment to section 6601.3 was made explicit by Senate Bill 1201, which, as discussed, added subdivision (b) defining good cause to mean "circumstances where there is a recalculation of credits or a

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[12] As amended in 2000 former section 6601.3 provided, "Upon a showing of good cause, the Board of [Parole Hearings] may order that a person referred to the State Department of Mental Health pursuant to subdivision (b) of Section 6601 remain in custody for no more than 45 days beyond the person's scheduled release date for full evaluation pursuant to subdivisions (c) to (i), inclusive, of Section 6601." (Stats. 2000, ch. 41, § 1, p. 129.)

restoration of denied or lost credits, a resentencing by a court, the receipt of the prisoner into custody, or equivalent exigent circumstances which result in there being less than 45 days prior to the person's scheduled release date for the full [SVP] evaluations . . . ." (See Stats. 2010, ch. 710, § 2.) Nothing in the legislative history of Senate Bill 1201 suggests the amendment was intended to broaden in any way the definition of good cause previously advanced to justify the 45-day hold. Indeed, the addition of this language was not specifically addressed in any of the committee analyses of the legislation and was simply summarized without additional analysis in the Legislative Counsel's digest.[13]

The language of section 6601.3, subdivision (b), itself, together with the focus during earlier legislative proceedings on judicial and administrative decisions that advance an inmate's release date and thereby shorten the time available to conduct the necessary SVP evaluations, necessarily inform our interpretation of the term "equivalent exigent circumstances" upon which the People rely to establish good cause for the 45-day extension of O'Connor's release date. (See *Murillo v. Fleetwood Enterprises, Inc*. (1998) 17 Cal.4th 985, 990 [in resolving questions of statutory interpretation, the court "must attempt to effectuate the probable intent of the Legislature, as expressed through the actual words of the statutes in question"; the first step """is to scrutinize the actual words

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[13] The primary purpose of Senate Bill 1201 was to require the Department of Corrections and Rehabilitation to evaluate with the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) those individuals convicted of certain sex offenses in another state or federal court who were subsequently transferred to California for parole supervision. (See Stats. 2010, ch. 710, § 1.) "The author wishes to explicitly require risk assessment for parole transfers from other states or the federal system and cites the Phillip Garrido case as evidence of this need. [¶] According to the author, 'Under current law when a parolee is transferred from another state or by the federal government to California, they are not required to undergo the same risk assessment that all sex offenders who are convicted in California must undergo. This loophole in current law was brought to light through the arrest of Phillip Garrido, who allegedly kidnapped and held Jaycee Duggard captive for 18 years. When Phillip Garrido's parole supervision was transferred to CDCR he did not receive any type of risk assessment. . . .'" (Assem. Com. on Appropriations, Analysis of Sen. Bill No. 1201, as amended June 16, 2010 (2009-2010 Reg. Sess.) June 30, 2010, pp. 1-2.)

of the statute, giving them a plain and commonsense meaning"""].) Subdivision (b) identifies several specific judicial or administrative actions that may interfere with the orderly processing of an individual inmate's SVP evaluation by reducing the time available to complete it—resentencing, recalculation of custody credits, restoration of denied or lost credits or the return of the prisoner to custody for a parole violation with insufficient time to complete the evaluation process. Moreover, under the plain language of the statute, it is not enough that an event or condition may significantly reduce the *total* time available to conduct the inmate's evaluation. Good cause exists only if the triggering event (for example, a recalculation of custody credits) leaves the Department of Mental Health with less than 45 days to finish its work.

"[E]quivalent exigent circumstances" as used in section 6601.3, subdivision (b), must be interpreted in a similarly restrictive manner. The ordinary meaning of the word "equivalent" is "equal in meaning or function" (see Oxford Dictionaries Online <http://oxfordictionaries.com (as of Sept. 22, 2011)) or "corresponding or virtually identical especially in effect or function." (See Merriam-Webster Online <http://www.merriam-webster.com (as of Sept. 22, 2011); see generally *Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1121-1122 ["[w]hen attempting to ascertain the ordinary, usual meaning of a word, courts appropriately refer to the dictionary definition of that word"].) In addition, under the principle of statutory construction known as *noscitur a sociis* (it is known by its associates), we are constrained to interpret "equivalent exigent circumstances" in a manner that does not make meaningless or unnecessary the Legislature's careful listing of several examples of a particular category of extraordinary events that support a finding of good cause. (See *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 307 [under the statutory construction principle of *noscitur a sociis*, "'a court will adopt a restrictive meaning of a listed item if acceptance of a more expansive meaning would make other items in the list unnecessary or redundant, or would otherwise make the item markedly dissimilar to the

other items in the list'"]; *Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1012.)

In sum, not all exigent or emergency circumstances, broadly defined, but only those virtually identical to the specific situations identified by the Legislature justify extending an inmate's scheduled release date under section 6601.3. Like the judicial and administrative actions identified in subdivision (b), "equivalent exigent circumstances" as used in this statute means an exceptional development, outside the control of the Department of Corrections and Rehabilitation and the Department of Mental Health, that reduces the time available and makes it impossible to complete the SVP evaluation before the inmate's scheduled release date. It does not include the chronic staffing shortages or increased professional caseloads that have apparently outstripped the funds and personnel made available to these agencies to do their work.

Our conclusion that lack of adequate resources does not justify extending an inmate's release date under the SVPA is reinforced by the Supreme Court's analysis last year in *People v. Engram* (2010) 50 Cal.4th 1131, which held the unavailability of a judge or courtroom to timely bring a criminal defendant to trial does not constitute good cause to delay the defendant's trial for purposes of Penal Code section 1382 when the circumstances are "fairly and reasonably attributable to the fault or neglect of the state." (*Engram*, at p. 1138.)[14] The *Engram* Court explained under *People v. Johnson* (1980) 26 Cal.3d 557, 571-572, the lack of a sufficient number of judges or courtrooms might constitute good cause to justify the delay of a trial in exceptional circumstances, but "delay arising out of chronic congestion of a court's trial docket cannot be excused." (*Engram*, at p. 1163.) "[T]he applicable California statutes do not require a chronically underfunded and understaffed court such as the Riverside Superior Court . . . to continue [criminal] trials beyond the presumptive statutory period (rather than dismiss the criminal

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[14] Under Penal Code section 1382, when a criminal case has not been brought to trial within the presumptive statutory time limit and the defendant has not consented to a postponement of the trial, the trial court must dismiss the action unless there is "good cause" for the delay. (See *People v. Engram*, *supra*, 50 Cal.4th at p. 1162.)

proceedings) on the premise that the persistent backlog constitutes 'good cause' under section 1382 to justify a delay. The calendar congestion that produced the circumstance in which the numerous last-day criminal cases pending in the superior court exceeded the resources available to the court unquestionably constituted a chronic condition. It cannot properly be characterized as an 'exceptional circumstance' as that term was used in our decision in [*People v.*] *Johnson, supra*, 26 Cal.3d 557, 571-572." (*Id.* at p. 1165; accord, *People v. Hajjaj* (2010) 50 Cal.4th 1184, 1198 ["although a broad variety of unforeseen events may establish good cause under [Pen. Code] section 1382, the unavailability of a number of judges or courtrooms sufficient to handle the court's caseload, *due to chronic congestion* of the court's docket, does not establish good cause, absent exceptional circumstances"].) Just as "the state bears the duty of supplying judicial resources sufficient to bring defendants to trial within the statutory period" (*Hajjaj*, at p. 1201), so too it has a responsibility to provide adequate resources to the Department of Corrections and Rehabilitation and the Department of Mental Health to permit those agencies to screen potential SVPs and process their evaluations in a timely manner.

Here, the Department of Mental Health had less than 45 days to evaluate O'Connor because his case was not referred to it by the Board of Parole Hearings until November 30, 2010, 36 days before his January 5, 2011 scheduled release date. This delayed referral by the Department of Corrections and Rehabilitation was the result of the chronic shortage of professional staff and massive caseload of possible SVPA offenders in the California prison system awaiting release, not unforeseen circumstances that created a case-specific emergency. Although this type of situation may constitute good cause for an extension of time in other contexts (cf. *R.J. Cardinal Co. v. Ritchie* (1963) 218 Cal.App.2d 124, 144 [the phrases "for cause," "for just cause" and "for good cause" "have been found to be difficult to define with precision and to be largely relative in their connotation, depending upon the particular circumstances of each case"]), the Legislature, apparently balancing public protection against the inmate's liberty interest, has chosen not to include an expansive definition of good cause in section 6601.3. We

are bound to follow the language of the statute and the limits set by the Legislature. (See *Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036, 1047.)

2. *O'Connor's Unlawful Custody Was the Result of a Good Faith Mistake of Law*

Although the 45-day extension of O'Connor's scheduled release date was not justified by exigent circumstances sufficient to establish good cause under section 6601.3, subdivision (b), it was authorized by Regulation 2600.1(d), which, as discussed, defined good cause as used in former section 6601.3 simply as "some evidence" that the inmate has a prior qualifying conviction and is likely to engage in sexually violent predatory criminal behavior without any required showing of exceptional circumstances that precluded the completion of the SVP evaluation within the statutory time frame.

Last year, prior to the enactment of Senate Bill 1201, two Courts of Appeal considered whether Regulation 2600.1(d) is valid. Our colleagues in Division Three of this court concluded it was; the Court of Appeal for the Third Appellate District held it was not. Review in both cases has been granted by the Supreme Court, which are now fully briefed and awaiting oral argument. (*People v. Superior Court* (*Sharkey*) (2010) 183 Cal.App.4th 85, review granted June 17, 2010, S182355; *In re Lucas* (2010) 182 Cal.App.4th 797, review granted June 17, 2010, S181788.) In light of these conflicting analyses and the subsequent grants of review, there is no controlling judicial determination that the regulation is invalid. Accordingly, the Department of Mental Health and the Board of Parole Hearings were entitled to rely on the regulation so as to preclude a dismissal of the petition under section 6601, subdivision (a)(2), as a good faith mistake of law. (See *People v. Hubbart* (2001) 88 Cal.App.4th 1202, 1229 [SVPA commitment resulting from unlawful custody was caused by a mistake of law; "[t]he Department of Corrections relied on a regulation that was apparently valid: at the time, there was no controlling judicial decision directly on point"]; *Langhorne v. Superior Court* (2009) 179 Cal.App.4th 225, 240-241 [absence of published decision construing 2006 amendments to SVPA supported finding People had made a good faith mistake of law when they brought motions to automatically convert two-year commitment terms to

indeterminate terms, rather than new petitions to extend the commitments for an indeterminate term]; see generally *In re Smith* (2008) 42 Cal.4th 1251, 1270 [§ 6601, subd. (a)(2), properly interpreted to allow SVPA proceedings to proceed against convicted prisoners "even when those prisoners stand to evade the statutory time limits for initiating SVP proceedings due to good faith factual or legal error"].)[15]

O'Connor challenges this analysis, asserting that Senate Bill 1201, which was enacted on September 30, 2010, three months before its effective date, "by its terms clearly invalidated Regulation 2600.1." Thus, O'Connor contends, whether or not it was reasonable to continue to rely on the definition of good cause in Regulation 2600.1(d) after an appellate decision put its validity in doubt—and O'Connor insists it was not—once section 6601.3 was amended to require exigent circumstances justifying a 45-day hold, it could not be a good faith mistake of law to extend a prisoner's scheduled release date simply because some evidence existed he or she was an SVP.

Even were we to agree with this argument, nothing in this record suggests the Department of Mental Health deliberately delayed its evaluations of O'Connor or did not reasonably and in good faith believe the greatly increased number of SVP referrals combined with the shortage of qualified clinicians, particularly during a holiday vacation

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[15] Although the Courts of Appeal in *People v. Superior Court* (*Sharkey*), and *In re Lucas*, disagreed whether Regulation 2600.1(d) was a valid administrative interpretation of former section 6601.3's good cause requirement, both courts held, even if invalid, reliance by the Board of Parole Hearings on Regulation 2600.1(d) to grant a 45-day hold was a good faith mistake of law, precluding dismissal of the petition to confine the inmate as an SVP. That issue, as well as the validity of Regulation 2600.1(d), is currently before the Supreme Court. (See fn. 4, above.) Similarly, our colleagues in Division Eight of this court issued a writ of prohibition directing the trial court to vacate its order dismissing an SVP petition based on the Department of Mental Health's delay in evaluating the inmate, explaining, even if he were unlawfully in custody, it was the result of "'a good faith mistake of fact or law.'" (*People v. Superior Court* (*Gilbert*) (2011) 196 Cal.App.4th 1355, 1362, pet. for review filed Aug. 3, 2011, S195336.) Moreover, applying the pre-2011 version of section 6601.3 the court found good cause existed to place a 45-day hold on the inmate, who had "'slipped through the cracks' until his discharge date" through an "honest mistake," rather than "systemic negligence." (*Id.* at p. 1363.)

period, justified a 45-day hold under section 6601.3 to complete its work and prevent the release of a potentially dangerous sex offender through the filing of an SVP petition. We hold today, as a matter of first impression, that a systemic shortage of resources sufficient to handle the SVP caseload is not good cause based on exigent circumstances within the meaning of newly enacted section 6601.3, subdivision (b). The People's and Department of Mental Health's contrary position taken before this issue was decided, is a good faith mistake of law. Accordingly, the superior court's dismissal of the petition to commit O'Connor as an SVP was error.

DISPOSITION

The petition is granted. Let a peremptory writ of mandate issue directing respondent Los Angeles County Superior Court to vacate its order of March 30, 2011 granting O'Connor's motion to dismiss the People's petition to have him declared a sexually violent predator and releasing him from custody and to enter a new order denying that motion and reinstating the petition to declare O'Connor a sexually violent predator and to conduct further proceedings not inconsistent with this opinion.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.