

## COMPARING CONTRASTING 3 CIVIL COMMITMENTS

1. Legislative & constitutional underpinnings of civil commitments
2. WIC 6500 Mental Retardation
3. Penal Code 2966/2972 MDO
4. WIC 6600 Sexually Violent Predator

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## CIVIL COMMITMENTS

- **Requisite Mental Disorder** is Legislatively defined
- **Degree of Impairment** is dictated by constitutional due process... "serious difficulty controlling dangerous behavior"
- **Level of Dangerousness** is dictated by constitutional due process... substantial risk or likelihood of serious physical injury

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## CIVIL COMMITMENTS

- Civil NOT penal... already punished for criminal conduct or charges dismissed
- Purpose is treatment, NOT punishment
- Justification for taking someone's liberty interest for what they might do in the future...  
requires substantial risk of serious physical injury

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## Requisite Mental Disorder

- Definition of mental deficiency, disorder or abnormality warranting involuntary civil confinement is primarily a legislative task
- *People v. Williams* (2003) 31 Cal4th 757, 774

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## Degree of Impairment

- Due process principles require that the 'mental ... deficiency, disorder, or abnormality' cause the person to have serious difficulty controlling his dangerous behavior
  - *In re Howard N.* (2005) 35 Cal4th 117, 136
  - *Kansas v. Crane* (2002) 534 US 407

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## Level of Dangerousness

- The danger ... must involve conduct that presents the likelihood of serious *physical* injury
- Any other conclusion would permit involuntary civil commitments ... in violation of a person's fundamental due process rights
- *People v. Hartshorn* (2012) 4th DCA, Division 1, Filed 1/20/12

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 **WIC 6500 Mental Retardation**

1. MR &/or Incompetent to stand trial
  - Retardation... IQ under 70
2. Serious difficulty controlling behavior
3. Danger to self or others, likelihood of serious physical injury

■ 1 year, Porterville Developmental Center, Canyon Springs, RC in community

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 **WIC 6500 Mental Retardation**

- Mentally retarded means:  
  
Significant subaverage general intellectual functioning concurrently with deficits in adaptive behavior, appearing in the developmental period

*Matter of Krall* (1984) 151 CA3d 792

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 **WIC 6500 Mental Retardation**

- Has serious difficulty controlling his dangerous behavior b/c of MR
  - *People v. Bailee* (2006) 144 CA4th 841
- MR must be a substantial factor in causing him to have serious difficulty in controlling his dangerous behavior
  - *People v. Sweeney* (2009) 175 CA4th 210

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 **WIC 6500 Mental Retardation**

- Dangerousness to self or others...
  - Incompetent to stand trial on an enumerated felony (288s, serious felonies where victim suffers great bodily injury), and/or
  - Must involve conduct that presents the likelihood of serious physical injury

*People v. Hartshorn* (2012) DCA 4<sup>th</sup> Div 1

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 **WIC 6500 Mental Retardation**

- Petition is filed by DA, at request of parent, PO, DJF, CDCR, RC, any person designated by court
  - In county where determined "incompetent" to stand trial, or
  - Residence of potential committee

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 **WIC 6500 Mental Retardation**

- Porterville Developmental Center must give priority admission to anyone found incompetent on strike ... 6501
  - Competency training for 3 yrs
  - Cannot "hold" on criminal charge beyond 3 years, but do not need to dismiss
- Typically, agree to dismiss in favor of 6500 commitment... Not guilty vs prison

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 **WIC 6500 Mental Retardation**

- Placement pending hearing, look to Regional Center and/or director of developmental center for “least restrictive placement”
  - Provide treatment
  - Community safety

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 **WIC 6500 Mental Retardation**

- Right to jury trial; court must advise
  - *People v. Alvas* (1990) 221 CA3d 1459
- Right to be present; due process
  - *In re Watson* (1979) 91 CA3d 445; written attestation unable to comprehend or too dangerous
  - *People v. Wilkinson* (2010) 185 CA4th 543; must waive right to be present on record

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 **WIC 6500 Mental Retardation**

- Unanimous verdict, due process
- No right not to testify, except 5<sup>th</sup> Amendment re pending or uncharged
- CRITICAL DIFFERENCE...
  - No Adjudication on criminal charge that served as the basis for filing petition for commitment

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### WIC 6500 Mental Retardation

- Once jury trial is completed, if committed...
- Commitment for one year from order
- Court holds evidentiary hearing to determine the least restrictive placement... Not jury issue

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### WIC 6500 Mental Retardation

- Placements include:
  - Porterville Developmental Center
  - Lanterman Developmental Center, closing
  - Canyon Springs Developmental Center
  - Sierra Vista in Highland
  - Board and care facilities with varying degrees of supervision & restriction

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### MDO Mentally Disordered Offender

- PC §2966, determinate term for violent offense (threat), 90 days, factor in offense
- Severe mental disorder, not personality disorder or MR, or substance addiction
- Not in remission... symptoms controlled
- Represents substantial danger of physical harm to others, 1 year during parole

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### MDO Mentally Disordered Offender

- PC §2972, extension of MDO, post parole
- Severe mental disorder, not personality disorder or MR, or substance addiction
- Not in remission... symptoms controlled
- Represents substantial danger of physical harm to others, 1 year

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### MDO Mentally Disordered Offender

- After criminal adjudication, CDCR must evaluate all prisoners within first year of incarceration
- Prisoners w/ Severe Mental Disorders should be provided treatment in prison
- Commitment... AFTER serving penal sentence

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### MDO Mentally Disordered Offender

- 1. Severe mental disorder, SMD
  - Illness or disease that substantially impairs person's thought, perception of reality, emotional process or judgment; or grossly impairs behavior
  - DOES NOT include personality disorder, epilepsy, MR or other developmental disabilities or ADDICTION to substances

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### MDO Mentally Disordered Offender

- 2. Not in remission, or cannot be kept in remission without treatment if w/in prior one year:
  - a. Physically violent, except Self Def
  - b. Made serious threat of physical harm
  - c. Intentional property damage
  - d. Not voluntarily follow treatment plan

*People v. Burroughs* (2005) 131 CA4th 1401

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### MDO Mentally Disordered Offender

- 3. By reason of SMD prisoner represents substantial danger of physical harm to others
  
- 4. SMD was cause or aggravating factor in commitment offense for which sentenced to state prison

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### MDO Mentally Disordered Offender

- 5. Prisoner has been in treatment for SMD for 90 days within prior year
  - Not outpatient treatment; county jail okay
  - People v. Del Valle* (2002) 100 CA4th 88
  - People v. Martin* (2005) 127 CA4th 970
  
- 6. Force or threat of in underlying offense
  - Specifically enumerated and "catch all"

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 **MDO Mentally Disordered Offender**

- Certified by Chief Psychiatrist CDCR, after evals from CDCR & DMH
- If do not concur, Two independent evaluations; if one concurs with Chief, then MDO
- Term & Condition of Parole must get treatment at state hospital

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 **MDO Mentally Disordered Offender**

- Board of Prison Terms BPT hearing
  - Can ask for two more evals
- If disagree w/ BPT, can petition for trial
  - 2966(b) *de novo* trial on 6 criteria
  - 2966(c) jury trial on 3 criteria
- Critical date, BPT hearing

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 **MDO Mentally Disordered Offender**

- Jury trial, but counsel can waive
  - Proof beyond reasonable doubt
  - No presumption Not True, *Beeson* 99 CA4th 1393
  - Unanimous verdict
  - Cannot refuse to testify *Clark* 82 CA4th 1072
- Rules of criminal & civil discovery apply
- Venue, 2966 parole, residence county
- One year commitment

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 **MDO Mentally Disordered Offender**

- 2968: If SMD put into remission during parole period and can be kept in remission without treatment,  
  
DMH shall notify BPT and shall discontinue treating parolee

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 **MDO Mentally Disordered Offender**

- 2970: 180 days prior to termination of parole, director of hospital prepares *remission evaluation*
- If parolee still meets MDO criteria, requests DA to file extension commitment under 2972

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 **MDO Mentally Disordered Offender**

- 2972:
  - Jury trial on 3 criteria in county convicted
  - Proof BYRD and unanimous verdict
  - Trial shall commence no later than 30 days before end of parole
  - Petition MUST be filed before end of parole
    - *People v. Allen* (2007) 42 C4th 91
  - If committed, TC can order outpatient
  - One year from prior termination

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 **MDO Mentally Disordered Offender**

- 2972.1: Outpatient status as MDO
  - Post parole, time on outpatient does NOT count towards commitment time
  - DA does not need to file recommitment petition if on outpatient
    - *People v. Morris* (2005) 126 CA4th 527
  - Annual report... allows committee to agree with extension or invoke right to jury trial

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 **MDO Mentally Disordered Offender**

- *People v. Starr* (2003) 106 CA4th 1202; SMD includes pedophilia
  - *People v. Dodd* (2005) 133 CA4th 1564; uncorroborated reference in PO report of molest, w/out reliable source, cannot support diagnosis
- *People v. Butler* (1999) 74 CA4th 557; Stalking can be qualifying offense
- *People v. Renfro* (2004) 125 CA4th 223; Cannot plea bargain around MDO

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 **MDO Mentally Disordered Offender**

- *People v. Dyer* (2002) 95 CA4th 448; force against animals sufficient to qualify
- *People v. Green* (2006) 142 CA4th 907; force against window of police car does not qualify
- *People v. Kortsmaki* (2007) 156 CA4th 922; only force in conviction offense counts
- *People v. Hannibal* (2006) 143 CA4th 1087; static factors subject to collateral estoppel

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 **MDO Mentally Disordered Offender**

- *People v. Campos* (1995) 32 CA4th 304; testifying expert cannot disclose that nontestifying expert agrees w/ conclusions
- *People v. Putnam* (2004) 115 CA4th 575; instructing jury on MDO statutory language "necessarily" encompasses finding that, ***serious difficulty controlling dangerous behavior***

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 **MDO Mentally Disordered Offender**

- *Cuccia v. SupCt* (2007) 153 CA4th 347; DA must accept DMH remission eval for 2972; cannot obtain outside expert
- *People v. Garcia* (2005) 127 CA4th 558; SMD for 2972 must be same SMD for which MDO'd during parole
- *People v. Tatum* (2008) 161 CA4th 31; 2972 petition filed 33 days before; no good cause; balanced prejudice vs justification; dismissal affirmed

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 **MDO Mentally Disordered Offender**

- MDO males, mostly at Atascadero SH
- MDO females, mostly at Patton SH
- Some male MDOs at Patton
- Some male MDOs at Coalinga SH
- Very few MDOs at Napa & Metro SHs
- Conditional release programs, North Star and Southpoint

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## SVP SEXUALLY VIOLENT PREDATOR

- **WIC §6600** If serving determinate term or parole revocation *for any offense*, can file petition
- Diagnosed mental disorder, affecting emotional or volitional capacity
- Predisposes the person to the commission of criminal sexual acts
- Danger to health and safety of others, likely will engage in sexually violent criminal behavior
- **INDETERMINATE TERM** of commitment

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## SVP SEXUALLY VIOLENT PREDATOR

- **One Qualifying Conviction** means:  
determinate term, indeterminate term, term of probation, NGI finding, MDSO, DJF commitment if 16 yrs or older
- **Sexually Violent Offense** means:  
Enumerates virtually every sexual crime when committed with force, violence, & kidnapping or assault with intent to commit a sexual crime, with the exception of... sexual battery, unlawful sexual intercourse, indecent exposure and 647.6

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## SVP SEXUALLY VIOLENT PREDATOR

- **6600.1** If the victim is under 14 years of age, the enumerated offense is necessarily a sexually violent offense
- **Diagnosed mental disorder** means:  
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... paraphilias, ASPD?
- **Likely to engage** in sexually violent criminal behavior unless treated in a secure environment

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## SVP SEXUALLY VIOLENT PREDATOR

- **6601** Within 6 mos of release to parole,
  - CDCR screen to determine if may meet criteria for SVP
  - CDCR refers to DMH for evaluation
  - DMH evaluates in accordance with protocol
  
- DMH appoints two evaluators to determine if SVP
  - If concur meets criteria, DMH recommends DA files petition
  - If split, two independent evaluators appointed
  
- If they concur, DMH recommends DA files petition

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## SVP SEXUALLY VIOLENT PREDATOR

- **6601(k)** Finding per 6601.5, facial review of petition supports probable cause that meets SVP, tolls parole for persons who are ultimately found to be SVP
  
- **6601(m)** DMH to report to Legislature costs of SOCP attributable to Jessica's Law, and
- Director shall execute declaration that sufficient state employees have been hired to conduct first round of evaluations under 6601(d)4141414141

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## SVP SEXUALLY VIOLENT PREDATOR

- **6001.3** Upon showing of good cause, BPT may order 45 day hold beyond parole release date for full evaluation
- **Good Cause** means: recalculation of credits, resentencing, receipt of prisoner or other exigent circumstances which result in less than 45 days prior to release
  - *People v. SupCt (Sharkey)/Lucas* Supreme Court opinion filed on 3/5/12 Regulation 2600.1 invalid, BUT "good faith mistake of fact or law" therefore, petitions NOT dismissed

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### SVP SEXUALLY VIOLENT PREDATOR

- **6601.5** Upon facial review of petition, court makes preliminary finding of probable cause to believe person is likely to engage in sexually violent predatory criminal behavior upon release
- Order probable cause hearing to commence within 10 calendar days

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### SVP SEXUALLY VIOLENT PREDATOR

- **6602** Probable cause hearing to determine if reasonable person could entertain a strong suspicion that potential committee meets SVP criteria, w/out treatment in secure setting.
  - *In re Parker* (1998) 60 CA4th 1453; evidentiary hrg, not just paper review
  - *Cooley v. SupCt* (2002) 29 Cal4th 228

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### SVP SEXUALLY VIOLENT PREDATOR

- **6603** (a) Jury trial, apptd counsel, retained expert, access by R to records
- 6603(b) P right to JT (f) unanimous verdict
- **6603(c)** Updated & replacement evaluations, interview, records, treators
  - *People v. Gray* (2002) 95 CA4th 322; if "split" of opinion can proceed to trial
  - *People v. Albertson* (2001) 25 Cal4th 796; "current" allows annual evals

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 **SVP SEXUALLY VIOLENT PREDATOR**

- **6604**
  - "If the court or jury is not satisfied beyond a reasonable doubt that the person is a SVP, court shall direct release..."
  - Hung juries, construed to allow unlimited retrials
  - If True verdict, **INDETERMINATE COMMITMENT** for treatment

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 **SVP SEXUALLY VIOLENT PREDATOR**

- **6605** After commitment, committee shall be evaluated annually
  - If no longer meets criteria, or
  - Conditional release is least restrictive alternative, Director shall authorize petition
    - *People v. Landau* (2011) 199 CA4th 31; if treatment team finds, Director **MUST** authorize
  - Entire jury process pursued

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 **SVP SEXUALLY VIOLENT PREDATOR**

- **6608**
  - Committee can petition for conditional release if condition so changed that can be treated in community
  - Court determines if "frivolous"
  - Evidentiary hearing to court
  - If conditionally released, one year later address "unconditional" release, court hrg

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## SVP SEXUALLY VIOLENT PREDATOR

- *People v. Ghilotti* (2002) 27 Cal4th 888;
  - Petition for recommitment filed by DA despite two evaluators concurred "did not meet" SVP
  - Director of DMH requested petition of DA
  - Court dismissed
  - DCA summarily denied writ
  - Supreme Court granted review on urgent basis
    - Likely does not mean more than 50%, rather serious & well founded risk... review for legal error
    - Must consider amenability to voluntary treatment
    - See *People v. Krah* (2003) 114 CA4th 534; T&Cs irrelevant, excluded evidence

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## SVP SEXUALLY VIOLENT PREDATOR

- *People v. Litmon II* (2008) 162 CA4th 383;
  - Consolidated recommitment petitions, 2 yr term
  - Hung jury; continued over defense objection
  - Motion to dismiss denied, no speedy trial
  - Court committed indeterminately w/out trial
  - DCA reversed; case dismissed
    - Ultimate responsibility for bringing person to trial at a "meaningful time" rests with the government
    - Due process, appellants fundamental liberty interest outweighed state's interests
    - Risk of erroneous deprivation of liberty was considerable

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## SVP SEXUALLY VIOLENT PREDATOR

- *People v. Allen* (2008) 44 Cal4th 843; committee has right to testify over objection of counsel
- *Leake v. SupCt* (2001) 87 CA4th 675; Civil Discovery Act applies to SVP special proceedings
- *People v. SupCt (Preciado)* (2001) 87 CA4th 1122; "unless otherwise provided, rules of civil procedure apply"
- *Bagration v. SupCt* (2003) 110 CA4th 1677; summary judgment motion N/A to SVP

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## SVP SEXUALLY VIOLENT PREDATOR

- *People v. Murillo* (2006) 143 CA4th 730; Requests for Admissions violate burden of production of evidence & burden of proof beyond reasonable doubt by petitioner; cannot be used in SVP
- *In re Ronje* (2009) 179 CA4th 509; assessment protocol per 6601 is underground regulation per APA; remedy is not dismissal, but new evaluations and probable cause per 6601
- Follow up cases pending, DCA 4<sup>th</sup> Div 3

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## COMPARING COMMITMENTS

- MDO, most recent conviction ... dictates potential commitment, not mental state
- SVP, **any** prior conviction ... dictates potential commitment, not mental state
- If MR... 6500 vs. MDO, SVP, mental state is key
  - No conviction (?); no 290 requirements (?)
  - Community placement *eventually*

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## COMPARING COMMITMENTS

- CIVIL COMMITMENTS, purpose is treatment, not penalty; the Legislature's response to:
  - Determinate sentencing
  - Ex post facto considerations
  - Double jeopardy considerations
- Increased sentencing... limited by \$\$\$

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