

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

JESS BOURQUEZ et al.,)	
)	C055402
Petitioners,)	
)	SACRAMENTO COUNTY
vs.)	SUPERIOR COURT
)	The Honorable David Abbott
THE SUPERIOR COURT OF THE)	
STATE OF CALIFORNIA, COUNTY)	2377093, 56225, 61422, 86595,
OF SACRAMENTO,)	114306, 94463, 93F02728,
)	116155, 95F01023, 72786,
Respondents,)	105735, 96F09863, 66404,
)	70618.
_____)	
THE PEOPLE OF THE STATE OF)	
CALIFORNIA,)	
)	
Real Parties in Interest.)	
_____)	

REPLY TO OPPOSITION TO PETITION FOR WRIT OF MANDATE

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ARGUMENT

I

PROPOSITION 83 CANNOT RETROACTIVELY REINSTATE JURISDICTION OVER EXTENSION PETITIONS THAT WERE PENDING WHEN SENATE BILL 1128 BECAME EFFECTIVE

In the Opposition to Petition for Writ of Mandate, Real Party in Interest, the People of the State of California, argue that

While SB 1128 amended section 6604 and 6604.1 **so as to delete all references to extended commitments, with the passage of Proposition 83, section 6604.1, as quoted above [in People's Opposition], again references extended commitments.**

(Opposition to Petition for Writ of Mandate, page 7, emphasis added.) The reference to extended commitments in Proposition 83 cited by the People is as follows:

Welfare and Institutions Code section 6604.1

(a) The indeterminate term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section.

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed for purposes of **extended commitments**. The rights, requirements, and procedures set forth in Section 6603 shall apply to all commitment proceedings.

(Official Voter Information Guide for the California General Election of November 7, 2006, page 137. Welfare & Institutions Code section 6604.1, as amended by Proposition 83, effective November 8, 2006. Emphasis added.)

The People maintain that because Proposition 83 included a reference to extended commitments, petitions for extended commitments are authorized by the Sexually Violent Predators Act (SVPA) and are therefore subject to the jurisdiction of the Superior Court of California.

Without conceding that such reference to extended commitments in Proposition 83 (Welfare and Institutions Code section 6604.1(b)) constitutes authorization for extended commitments, Petitioners point out, as the People note in their Opposition, that such reference to extended commitments was not contained in Senate Bill 1128. In fact, Senate Bill 1128 deleted the authorizing language for extended commitments that existed previously.

Prior to the effective date of Senate Bill 1128, Welfare and Institutions Code section 6604.1 read as follows:

Welfare and Institutions Code section 6604.1

(a) The two-year term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section. The initial two-year term shall not be reduced by any time spent in a secure facility prior to the order of commitment. For any **subsequent extended commitments**, the term of commitment shall be for two years commencing from the date of the termination of the previous commitment.

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The

provisions of subdivisions (c) to (i) inclusive, of Section 6601 shall apply to evaluations performed for purposes of **extended commitments**. The rights, requirements, and procedures set forth in Section 6603 shall apply to **extended commitment proceedings**.

(West, 2005. Emphasis added.)

As amended by Senate Bill 1128, Welfare and Institutions Code section 6604.1 read as follows:

Welfare and Institutions Code section 6604.1

(a) The indeterminate term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section.

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed pursuant to a trial conducted pursuant to subdivision (f) of Section 6605. The rights, requirements, and procedures set forth in Section 6603 shall apply to all commitment proceedings.

(Stats. 2006, chapter 337, section 56. Welfare & Institutions Code section 6604.1, as amended by Senate Bill 1128, effective September 20, 2006.)

If the reference to extended commitments in Proposition 83 (Welfare and Institutions Code section 6604.1(b)) re-establishes authority for extended commitments, then conversely Senate Bill 1128's deletion of all previous references to extended commitments repealed this authority. Thus, from September 20, 2006 through November 7, 2006, when Senate Bill 1128 was in effect and section 6604.1(b) contained no reference to recommitment proceedings, the law regarding extended commitments was repealed.

Furthermore if a reference to extended commitments in Proposition 83 re-establishes authority for extended commitments, such authority would be re-established only prospectively - from November 8, 2006 on - not retrospectively (prior to November 8, 2006). Unless a statute expressly states that it is to be applied retroactively, it can be applied only prospectively. *Garcetti v. Superior Court* (1999) 76 Cal. App. 4th 685, 693.

One must wonder why a reference to extended commitments is even necessary in Welfare and Institutions Code section 6604.1(b) when section 6604.1(a) states that terms of commitment shall be indeterminate. This reference to extended commitments is arguably an attempt to address two-year commitments ordered before September 20, 2006, the effective date of Senate Bill 1128. If the need to address two-year commitments was evident to the authors of Proposition 83, it must have been equally obvious to the authors of Senate Bill 1128.

Since the version of section 6604.1 that existed while Senate Bill 1128 was in effect deleted all previous references to extended commitments, we must conclude that provisions for extended commitments were repealed by Senate Bill 1128. The California Supreme Court has rejected the notion of legislation by accident. *In re Christian S.* (1994) 7 Cal. 4th 768, 776. The legislature is presumed to know existing law, including its previous acts and existing judicial decisions construing those acts. *Arthur Andersen v. Superior Court* (1998) 67 Cal. App. 4th 1481,1501. “It is assumed that the Legislature has existing laws in mind

at the time that it enacts a new statute.” *Arthur Andersen v. Superior Court* (1998) 67 Cal. App. 4th 1481,1501, citing *Estate of McDill* (1975) 14 Cal. 3d 831, 837.

When Senate Bill 1128 repealed the authority for extended commitments, pending petitions for extended commitments terminated, and the court lost jurisdiction over these petitions. Proceedings under the SVPA are statutory in nature. *People v. Rowell* (2006) 133 Cal.App. 4th 447. “[W]hen a pending action rests solely on a statutory basis, and when no rights have vested under the statute, ‘a repeal of such statute without a savings clause will terminate all pending actions based thereon.’ ” *Governing Board of Rialto Unified School District v. Mann* (1977) 18 Cal. 3d 819, 829, citing *Southern Service Co., Ltd. v. Los Angeles* (1940) 15 Cal. 2d 1, 11-12. Petitioners were pending jury trial on independent recommitment petitions when Senate Bill 1128 became effective on September 20, 2006. Petitioners had served their prison sentences, were not subject to any holds, and had completed their two-year SVP commitments. These pending petitions were the only basis for Petitioners’ loss of liberty. Since procedures for extended commitments were repealed by Senate Bill 1128 while Petitioners’ recommitment petitions were pending, and Senate Bill 1128 did not have a savings clause that applied to pending petitions, the court lost jurisdiction over Petitioners.

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II

A SAVINGS CLAUSE WAS REQUIRED IN ORDER TO PRESERVE JURISDICTION OVER PENDING EXTENDED COMMITMENT PETITIONS

As stated above, we must presume that the legislature was aware of the then-current law when it amended Welfare and Institutions Code section 6604.1 by deleting the authorizing language for extended commitments in Senate Bill 1128. The legislature also failed to include a savings clause in Senate Bill 1128. Given the California Supreme Court's rejection of legislation by accident in *In re Christian S.* (1994) 7 Cal. 4th 768, 776, this omission of a savings clause is presumed intentional.

Also as stated above, the legislature is presumed to be aware of judicial decisions concerning statutes. In *Baker v. Superior Court* (1984) 35 Cal. 3d 663, the California Supreme Court held that after the repeal of the Mentally Disordered Sex Offender (MDSO) statute, authority for extension proceedings still existed only because the legislature included an express savings clause in the repealing statute: "Nothing in this act shall be construed to affect any person under commitment...prior to the effective date of this act." (Stats. 1981, chapter 928, sections 3, 4.) If we presume the legislature was aware of *Baker* when it enacted Senate Bill 1128, we must conclude that the exclusion of a savings clause was intentional, and the authority for pending petitions was repealed.

Proposition 83 also lacked an explicit savings clause like the one found in *Baker*. To deem the words, “extended commitments,” in Welfare and Institutions Code section 6604.1(b) the equivalent of a savings clause flies in the face of *Baker*.

CONCLUSION

Petitioners were awaiting trial on petitions for extended commitments when the authority for these petitions was repealed by Senate Bill 1128. The purported re-establishment of this authority in Proposition 83 cannot reinstate the jurisdiction over these Petitioners that was lost while Senate Bill 1128 was in effect. For the reasons stated above and the reasons stated in Petitioners’ Opening Brief, Petitioners respectfully request that this court issue the writ of mandate.

Dated this 21st day of May 2007.

Respectfully submitted,

Robert J. Saria
Attorney for Petitioners

CERTIFICATION

I certify that the attached Reply to Opposition to Petition for Writ of Mandate uses 13 point Roman type and contains approximately 1,565 words.

Dated this 21st day of May 2007.

Respectfully submitted,

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4. I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed this 21st day of May, 2007 in Sacramento County, CA.

DECLARANT