



EXECUTIVE AND PLANNING COMMITTEE

MINUTES OF OPEN MEETING WITH CLOSED SESSION

December 12, 2023

12:10 to 2:30 p.m.

Videoconference

Advisory Body Members Present: Hon. Brad R. Hill (Chair), Hon. Maureen F. Hallahan (Vice-chair), Hon. Marla O. Anderson, Hon. Judith K. Dulcich, Hon. Samuel K. Feng, Hon. Carin T. Fujisaki, Hon. Maria D. Hernandez, Hon. Ann C. Moorman, Ms. Gretchen Nelson, and Mr. David H. Yamasaki

Committee Staff Present: Ms. Amber Barnett, Ms. Josely Yangco-Frona, and Ms. Donna Ignacio

Staff Present: Ms. Karene Alvarado, Mr. James Barolo, Ms. Deborah Brown, Ms. Laura Brown, Mr. Joseph Carozza, Ms. Mary Carter, Ms. Lisa Chavez, Mr. Blaine Corren, Ms. Charlene Depner, Mr. Adam Dorsey, Ms. Sarah Fleischer-Ihn, Mr. Michael Giden, Ms. Jessica Goldstein, Ms. Kristin Greenway, Ms. Kathy Joson, Ms. Tracy Kenny, Ms. Maria Kwan, Mr. Don Lowrie, Mr. Chris Magnusson, Mr. Ray Mata, Ms. Anna Maves, Ms. Kelly Parrish, Ms. Becky Porter, Ms. Elyse Pulley, Mr. Corey Rada, Ms. Sarah Rattanasamay, Ms. Cristina Resendiz-Johnson, Ms. Akilah Robinson, Ms. Anne Ronan, Ms. Leah Rose-Goodwin, Ms. Jennifer Saelee, Mr. Jonathan Sibayan, Ms. Elaine Siega, Ms. Melanie Snider, Ms. Laura Speed, Ms. Lynette Stephens, Mr. Corby Sturges, Mr. Zlatko Theodorovic, Ms. Oksana Tuk, Ms. Sadie Varela, Ms. Shaneen Williams, and Mr. John Wordlaw

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 p.m. Staff took roll call and made the opening announcements.

Approval of Minutes

The committee reviewed the draft minutes of the following:

- October 17, 2023, open meeting; and
- October 24, 2023, action by email.

Action: *The committee approved the minutes of the October 17, 2023, open meeting and October 24, 2023, action by email.*

DISCUSSION AND ACTION ITEM

Item 1

Agenda Setting for January 19, 2024, Judicial Council Meeting (Action Required)

Review draft reports and set the agenda for the Judicial Council meeting in January.

Action: The committee set the agenda for the January 19, 2024, Judicial Council meeting by approving reports for placement on the business meeting agenda.

Item 2

Creation of One New Subordinate Judicial Officer Position: Superior Court of Orange County (Action Required)

Review and approve a recommendation from the Office of Court Research staff to confirm a request from the Superior Court of Orange County for the creation of one new permanent, full-time subordinate judicial officer (SJO) position to provide increased access to justice to the communities the court serves.

Action: With two abstentions (Judge Hernandez and Mr. Yamasaki), the committee approved the recommendation from the Office of Court Research staff and confirmed the request from the Superior Court of Orange County for the creation of one new permanent, full-time SJO position.

Item 3

2024 Annual Agenda: Trial Court Presiding Judges Advisory Committee (Action Required)

Review the draft annual agenda of the Trial Court Presiding Judges Advisory Committee.

Action: With one abstention (Judge Hernandez), the committee approved the 2024 annual agenda of the Trial Court Presiding Judges Advisory Committee.

Item 4

2024 Annual Agenda: Court Executives Advisory Committee (Action Required)

Review the draft annual agenda of the Court Executives Advisory Committee.

Action: With one abstention (Mr. Yamasaki), the committee approved the 2024 annual agenda of the Court Executives Advisory Committee.

A D J O U R N M E N T

There being no further open meeting business, the meeting was adjourned at 12:28 p.m.

C L O S E D S E S S I O N

Pursuant to California Rules of Court, rules 10.75(d)(1)

Nominations for Out-of-Cycle Appointments to Advisory Bodies

Review nominations and develop recommendations to the Chief Justice regarding out-of-cycle appointments to the following advisory bodies:

- Advisory Committee on Providing Access and Fairness
- Civil and Small Claims Advisory Committee
- Court Facilities Advisory Committee
- Criminal Law Advisory Committee
- Data Analytics Advisory Committee
- Information Technology Advisory Committee
- Legal Services Trust Fund Commission
- Probate and Mental Health Advisory Committee
- Shriver Civil Counsel Act Implementation Committee

Action: The committee developed recommendations to be submitted to the Chief Justice for out-of-cycle appointments to the advisory bodies listed above.

Adjourned closed session at 1:18 p.m.

Approved by the advisory body on _____.



EXECUTIVE AND PLANNING COMMITTEE

MINUTES OF ACTION BY EMAIL

Monday, January 8, 2024

3:30 p.m.

Advisory Body Members Present: Hon. Brad R. Hill (Chair), Hon. Maureen F. Hallahan (Vice-chair), Hon. Marla O. Anderson, Hon. Judith K. Dulcich, Hon. Samuel K. Feng, Hon. Carin T. Fujisaki, Hon. Maria D. Hernandez, Hon. Ann C. Moorman, Ms. Gretchen Nelson, and Mr. David H. Yamasaki

Others Present: Ms. Amber Barnett, Ms. Josely Yangco-Fronza, and Ms. Donna Ignacio

ACTION BY EMAIL

As provided in the California Rules of Court, rule 10.75 (o)(1)(B), the chair concluded that prompt action was needed. This action by email concerned matters that would otherwise be discussed in an open meeting; therefore, in accordance with rule 10.75(o)(2), public notice and the proposal were posted on Friday, January 5, 2024, to allow at least one complete business day for public comment before the committee took action. No public comments were received.

OPEN DISCUSSION AND ACTION ITEM

Agenda Setting for January 19, 2024, Judicial Council Meeting (Action Required)

Review and consider the draft council reports listed below for placement on the January 19, 2024, Judicial Council business meeting agenda.

1. 24-052 (updated): Judicial Branch Technology | Allocation of Funds for AB 716 Legislative Mandate, Fiscal Year 2023–24 (Action Required)
2. 24-069 (new): Judicial Council | Judicial Council Appointments to the California Access to Justice Commission (Action Required)

Action: The committee approved the reports above for placement on the January 19, 2024, Judicial Council business meeting agenda.

CLOSURE OF ACTION

The action by email concluded at 7:29 a.m. on January 9, 2024.

Approved by the committee on _____.



Judicial Council of California

Meeting Agenda

Judicial Council

Please visit
courts website:
www.courts.ca.gov
to view live meeting on
March 15, 2024

Meeting materials
are available through
the hyperlinks in
this document.

*Open to the Public Unless Indicated as Closed
(Cal. Rules of Court, rule 10.6(a))*

*Requests for ADA accommodation should be directed to
JCCAccessCoordinator@jud.ca.gov*

Friday, March 15, 2024

San Francisco

CLOSED SESSION (RULE 10.6(b))—PLANNING, PERSONNEL, AND DISCUSSION PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE

Session: 9:00 – 9:30 a.m.

OPEN SESSION (RULE 10.6(a)) — MEETING AGENDA

A link to the live videostream will be available in the Meeting Information Center at the start of the open session. If the closed session adjourns late, the start time of the open session may be delayed.

Open Session Begins: 9:45 a.m.

Call to Order

10 minutes

Public Comment

10 minutes

The Judicial Council welcomes public comment on general matters of judicial administration. Written comments are encouraged in advance of the meeting for specific agenda items so council members can consider them prior to the council meeting.

For more information about meeting attendance and public comment procedures, visit:

<http://www.courts.ca.gov/28045.htm>

Submit advance requests to speak and written comments for this meeting by 12:00 p.m. on Thursday, March 14, by email to:

judicialcouncil@jud.ca.gov

Chief Justice's Report*15 minutes***Administrative Director's Report****24-008 Administrative Director's Report***15 minutes***CONSENT AGENDA***5 minutes*

A council member may request an item be moved from the Consent Agenda to the Discussion Agenda. Please notify Josely Yangco-Fronza at 415-865-7626 at least 48 hours before the meeting.

[24-002](#) Minutes of January 19, 2024, Judicial Council Meeting**[24-077](#) Allocations and Reimbursements to Trial Courts | Access to Visitation Grant Program Funding Allocation for Federal Fiscal Years 2024-25 through 2026-27 (Action Required)****Summary:**

The Family and Juvenile Law Advisory Committee recommends approving the Access to Visitation Grant Program funding allocation and distribution of \$655,000 statewide for federal grant fiscal years 2024-25 through 2026-27. Family Code section 3204(b)(2) requires the Judicial Council to determine the final number and amount of grants to be awarded to the superior courts. Subject to the availability of federal funds, the funding allocations will be directed to eight superior courts, representing 13 counties, and involving 11 subcontractor agencies (i.e., local courts community nonprofit service providers) to support and facilitate noncustodial parents' access to and visitation with their children through supervised visitation and exchange services, parent education, and group counseling services for family law cases.

[24-067](#) Court Technology | Minimum Standards for Courtroom Technology to Permit Remote Participation in Court Proceedings (Sen. Bill 133) (Action Required)**Summary:**

The Information Technology Advisory Committee recommends adopting proposed minimum technology standards to satisfy the statutory requirements of Senate Bill 133 (Stats. 2023, ch. 34). The statute requires the Judicial Council to adopt by April 1, 2024, and the trial courts to implement by July 1, 2024, minimum standards for courtroom technology necessary to permit remote participation in court proceedings.

[24-062](#)**Jury Instructions | Criminal Jury Instructions (2024 Edition)
(Action Required)****Summary:**

The Advisory Committee on Criminal Jury Instructions recommends approving for publication the revised criminal jury instructions prepared by the committee under rule 2.1050 of the California Rules of Court. These changes will keep the instructions current with statutory and case authority. Once approved, the revised instructions will be published in the 2024 edition of *Judicial Council of California Criminal Jury Instructions (CALCRIM)*.

[24-060](#)**Juvenile Law | 2023-24 Allocations for Dependency Counsel
Collections Program and Expected Unspent Program Funding
(Action Required)****Summary:**

The Trial Court Budget Advisory Committee recommends two redistributions of funding for court-appointed juvenile dependency counsel for fiscal year (FY) 2023-24. Under the Juvenile Dependency Counsel Collections Program, courts collect reimbursements from parents and other responsible persons liable for the cost of dependency-related legal services to the extent that those persons are able to pay. The committee recommends that the Judicial Council allocate the FY 2022-23 statutorily restricted funds to the trial courts, calculated according to the methodology adopted by the council in 2012. The committee also recommends that the council reallocate unspent dependency counsel funding from courts that have identified funds they do not intend on spending to courts that are not fully funded to their need.

[24-080](#)**Rules and Forms | Adjustments to Dollar Amounts of Civil Penalty
(Action Required)****Summary:**

Judicial Council staff recommend that the Judicial Council amend Appendix H of the California Rules of Court to reflect changes in the California Consumer Price Index as required by Health and Safety Code section 25249.7(k)(2)(B)(ii). Appendix H sets out the five-year adjustment to the dollar amount of a civil penalty for an alleged violation of Health and Safety Code section 25249.6.

[24-082](#)**Rules and Forms | Order for Debtor's Examination
(Action Received)****Summary:**

Judicial Council staff recommend revising the instructions on one Judicial Council form to implement a statutory change made by Assembly Bill 1119 (Stats. 2023, ch. 562), enacted October 8, 2023. Staff recommend revising the form to ensure it conforms to existing law and to avoid causing confusion for court users, clerks, and judicial officers.

[24-079](#)**Rules and Forms | Technical Form Changes to Reflect Federal Poverty Guidelines (Action Required)****Summary:**

Judicial Council staff recommend the revision of four Judicial Council forms containing figures that are based on the federal poverty guidelines. The federal government recently published updates to these guidelines, and the revised forms reflect these changes.

[24-066](#)**Trial Court Budget | 2023-24 State Trial Court Improvement and Modernization Fund Allocation Increase for Judicial Education (Action Required)****Summary:**

The Trial Court Budget Advisory Committee recommends a \$150,000 increase to the fiscal year 2023-24 Judicial Education program allocation from the State Trial Court Improvement and Modernization Fund to provide additional judicial officer orientation to newly appointed judges due to the increased number of judicial appointments in recent months. The increased budget, from \$1.1 million to \$1.3 million, will provide the resources necessary for the Judicial Council's Center for Judicial Education and Research to offer additional training programs this fiscal year to ensure that newly appointed judicial officers receive the training they need and meet the new judge education requirements of California Rules of Court, rule 10.462.

[24-081](#)**Trial Court Budget | Update to the Funds Held on Behalf of the Trial Courts Policy (Action Required)****Summary:**

The Trial Court Budget Advisory Committee recommends adopting revisions to the current policy and guidelines for the Funds Held on Behalf of the Trial Courts' program. The revisions include newly defined criteria, streamlining the submission process, and implementing a reimbursement model to distribute funding to the participating trial courts. Under the Judicial Council-approved process for funds held on behalf, courts can request a reduction in their Trial Court Trust Fund allocations be retained in the Trial Court Trust Fund as restricted fund balance for the benefit of those courts. The funds are then allocated back to the courts by the Judicial Council for the purposes stated in the approved requests.

INFORMATION AGENDA (NO ACTION REQUIRED)[24-075](#)**Report to the Judicial Council | Release of Demographic Data on California Justices and Judges****Summary:**

This informational report to the Judicial Council is notice of the annual release of aggregate demographic information concerning the gender, race/ethnicity, sexual orientation, gender identity, veteran status, and disability status of California's justices and judges by specific jurisdiction, which council staff is required by statute to collect and release annually.

[24-076](#)**Report to the Judicial Council | Trial Court Facility Modifications
Report for Quarter 2 of Fiscal Year 2023-24****Summary:**

This informational report to the Judicial Council outlines the allocations of facility modification funding made to improve trial court facilities in the second quarter (October through December) of fiscal year 2023-24. To determine allocations, the Trial Court Facility Modification Advisory Committee reviews and approves facility modification requests from across the state in accordance with the council's *Trial Court Facility Modifications Policy*.

[24-078](#)**Report to the Legislature | California's Access to Visitation Grant
Program (Federal Fiscal Years 2022-23 and 2023-24)****Summary:**

Family Code section 3204(d) requires that the Judicial Council submit a report to the Legislature, on the first day of March of each even-numbered year, on the Access to Visitation Grant programs administered by the Judicial Council. *California's Access to Visitation Grant Program (Federal Fiscal Years 2022-23 and 2023-24): 2024 Report to the Legislature* provides information on the programs funded for federal fiscal years 2022-23 and 2023-24 under California's Access to Visitation Grant Program for Enhancing Responsibility and Opportunity for Nonresidential Parents.

[24-064](#)**Report to the Legislature | Compliance With Education
Requirements of Welfare and Institutions Code Section 304.7****Summary:**

In accordance with Welfare and Institutions Code section 304.7(c), the Judicial Council submits the required compliance report to the Legislature, *Juvenile Dependency Training Completion Report*. The attached report demonstrates compliance by judges, commissioners, and referees with the juvenile judicial officer training and education requirements of the statute. The information provided in this report was gathered from the courts by staff of the Judicial Council's Center for Judicial Education and Research.

[24-071](#)**Report to the Legislature | Court Reporter Fees Collected and
Expenditures for Court Reporter Services in Superior Court Civil
Proceedings for 2022-23****Summary:**

Pursuant to Government Code section 68086(f), the Judicial Council is required to submit a report on the statewide court reporter fees collected and expenditures for court reporter services in superior court civil proceedings to the Joint Legislative Budget Committee on or before February 1 of each year. On February 1, 2024, Judicial Council staff submitted the *Report of Court Reporter Fees Collected and Expenditures for Court Reporter Services in Superior Court Civil Proceedings for 2022-23*.

[24-061](#)**Report to the Legislature | Online Infraction Adjudication and Ability-to-Pay Determinations (2024)****Summary:**

This report fulfills the legislative requirements set forth in Government Code section 68645.5. It describes actions taken to expand online ability-to-pay determinations requests for infraction violations statewide as authorized by Assembly Bill (AB) 143 (Committee on Budget; Stats. 2021, ch. 79). It describes the system's users, explains how the *MyCitations* tool is being implemented, and presents data on the impact of the system related to the reduction of court-ordered debt. Finally, it documents actions taken for the statewide expansion of the program. Forty courts currently offer online ability-to-pay determination requests through *MyCitations* with the remaining 18 courts scheduled to implement the tool in 2024. Between the program's launch in April 2019 and through December 2023, over 128,000 ability-to-pay requests were submitted through the *MyCitations* tool by over 91,000 defendants. These cases accounted for over \$71 million in outstanding infraction fines and fees and after judicial review, were reduced by more than \$36.7 million. Consistent with research findings presented last year, analysis of debts collected from requests made through *MyCitations* demonstrates that a defendant was more likely to pay when offered a reduced amount.

[24-023](#)**Report to the Legislature | Trial Court Operational Metrics, 2024 Report****Summary:**

The Budget Act of 2022 (Stats. 2022, ch. 43) requires that the Judicial Council annually report to the Legislature on the operations of each trial court and include various specified operational and budgetary metrics. This is the second year that the branch has produced this report.

Judicial Council Internal Committee Reports**24-014 Written Reports****Circulating Orders****24-021 Circulating Orders since the last business meeting.****Appointment Orders****24-022 Appointment Orders since the last business meeting.****Adjournment**



Judicial Council of California

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Telephone 415-865-4200 · Fax 415-865-4205

M E M O R A N D U M

Date

February 7, 2024

Action Requested

Review and Approve

To

Executive and Planning Committee

Deadline

February 14, 2024

From

Robert Oyung, Chief Deputy Director

Contact

Laura Speed
Leadership Support Services
916-323-3235 phone
laura.speed@jud.ca.gov

Subject

Referral from California Supreme Court:
Study Pretrial Delays in Sexually Violent
Predator Act Cases

Michael I. Giden
Legal Services
415-865-7977 phone
michael.giden@jud.ca.gov

Recommendation

Judicial Council staff recommends the Executive and Planning Committee:

1. Consider the recommendation of the Supreme Court in *Camacho v. Superior Court* (2023) 15 Cal.5th 354, to study the issue of pretrial delays in Sexually Violent Predator cases and what, if any, additional procedures could be put in place to improve the timeliness of the adjudication of these cases;
2. Direct the Administrative Director of the Judicial Council to refer the review of pretrial delays in Sexually Violent Predator cases to the Criminal Justice Services office for study as outlined in *Camacho v. Superior Court* (2023) 15 Cal.5th 354; and
3. Require the Administrative Director or their delegate to report back to this committee with recommended action items within six months.

Analysis/Rationale

The Sexually Violent Predator Act (Welf. & Inst. Code, § 6600 et seq.) authorizes the involuntary commitment of certain convicted sex offenders—termed “sexually violent predators,” or SVPs—who are found to have mental disorders that make them likely to reoffend after release from prison (see Link A). In a recent case, *Camacho v. Superior Court* (2023) 15 Cal.5th 354, (*Camacho*), the Supreme Court considered whether extended pretrial delays in these cases could violate an individual’s constitutional rights (see Attachment A).

Although the court determined that the individual in *Camacho* had not established that the pretrial delay in this case resulted in a violation of his due process rights, the court noted “the vital role of trial courts in safeguarding the timely trial right of alleged SVPs. . . The trial court must take due account of the individual’s interests in prompt adjudication and take decisive steps to guard against unjustified delay.” (*Camacho, id.*, at p. 368.) The court concluded by inviting the Judicial Council to examine “the issue of pretrial delays in SVP cases with the input of interested persons and consider what, if any, additional safeguards would facilitate timely adjudication of petitions for commitment under the SVP Act.” (*Camacho, id.*, at p. 395.)

The Judicial Council Criminal Justice Services office (CJS) oversees and coordinates the Judicial Council’s efforts related to criminal justice in order to improve efficiencies and provide assistance to courts, justice system partners, and the public. CJS is staffed to perform a broad range of legal, program, and research functions to facilitate the council’s obligations related to criminal justice policy, procedure, and court administration. This work extends to mental health and commitment issues that cross over with criminal justice matters, including SVPs. Based on the responsibilities of the CJS office, no additional analysis was done as CJS is the appropriate Judicial Council subject matter office.

Alternatives considered

The proposed review was made by the California Supreme Court within the *Camacho* case; thus, no alternatives were considered.

Fiscal and Operational Impacts

CJS can conduct this study with existing staffing and resources. It is unknown if there will be fiscal or operational impacts if the council implements the recommendations for future action from CJS. These impacts, if any, will be addressed in any reports related to implementation recommendations.

Attachments and Links

1. Attachment A: *Camacho v. Superior Court* (2023) 15 Cal.5th 354
2. Link A: Welf. & Inst. Code, § 6600 et seq.,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6600&lawCode=WIC

15 Cal.5th 354
Supreme Court of California.

Ciro CAMACHO, Petitioner,

v.

The SUPERIOR COURT OF
MERCED COUNTY, Respondent;
The People, Real Party in Interest.

S273391

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August 31, 2023

Synopsis

Background: State petitioned for involuntary civil recommitment of convicted sex offender as sexually violent predator (SVP), seeking indefinite commitment under new version of statute that replaced two-year renewable commitment terms. The Superior Court, Merced County, No. F082798, [Ronald W. Hansen, J.](#), denied offender's motion to dismiss based on alleged due process violation arising from pretrial delay. Offender petitioned for writ of mandate. The Court of Appeal, [2022 WL 189070](#), denied the petition. Review was granted.

Holdings: The Supreme Court, [Kruger, J.](#), held that:

[1] for due process challenge to delay before SVP trial, general balancing under [Mathews v. Eldridge](#) for procedural due process rights is unnecessary, and it suffices to consider factors laid out in [Barker](#) for Sixth Amendment speedy trial claims;

[2] length of pretrial delay, i.e., more than a decade, was factor strongly weighing in favor of finding due process violation;

[3] reasons for pretrial delay constituted factor weighing against finding due process violation;

[4] offender's lack of assertion of right to timely trial was factor weighing against finding due process violation;

[5] a presumption of prejudice from delay before SVP trial is not applied; disapproving of [People v. Tran](#), 276 Cal.Rptr.3d 603; [In re Butler](#), 269 Cal.Rptr.3d 649;

[People v. Bradley](#), 264 Cal.Rptr.3d 819; [People v. DeCasas](#), 268 Cal.Rptr.3d 663; [People v. Superior Court \(Vasquez\)](#), 238 Cal.Rptr.3d 14;

[6] lack of appreciable prejudice was factor weighing against finding due process violation; and

[7] balance of factors weighed against finding due process violation.

Court of Appeal affirmed.

Procedural Posture(s): Commitment Proceeding.

West Headnotes (41)

[1] **Constitutional Law** 🔑 Commitment and confinement

In the context of proceedings for involuntary civil commitment of a convicted sex offender as sexually violent predator (SVP), the deprivation of liberty begins, for purposes of due process right to timely trial on SVP petition, when a court finds probable cause to hold the offender in state custody pending trial, and the trial court, in making determinations that will affect when trial is held, must take due account of the offender's interests in prompt adjudication and take decisive steps to guard against unjustified delay. *U.S. Const. Amend. 14*; *Cal. Welf. & Inst. Code* § 6602.5(a).

[2] **Mental Health** 🔑 Persons and offenses included

At trial on petition for involuntary civil commitment of convicted sex offender as sexually violent predator (SVP), the State bears the burden of proving beyond a reasonable doubt that, at time of trial: (1) the offender has previously been convicted of at least one qualifying sexually violent offense; (2) the offender has a diagnosed “mental disorder” that makes the offender a danger to the health and safety of others; (3) the “mental disorder” makes it likely the offender will engage in future acts

of sexually violent criminal behavior if released from custody; and (4) those acts will be predatory in nature. Cal. Welf. & Inst. Code §§ 6600(a)(1), (b), [§§ 6601, 6603, 6604](#).

1 Case that cites this headnote

[3] **Courts** [🔑](#) Construction of federal Constitution, statutes, and treaties

The California Supreme Court has the power and authority to construe the California Constitution independently of the United States Constitution.

[4] **Constitutional Law** [🔑](#) Notice and Hearing

The fundamental requirement of procedural due process is the opportunity to be heard at a meaningful time and in a meaningful manner. U.S. Const. Amend. 14.

[5] **Constitutional Law** [🔑](#) Commitment and confinement

In determining whether delay before trial on petition for involuntary civil commitment of convicted sex offender as sexually violent predator (SVP) violates offender's due process right to timely trial, general balancing under [§ Mathews v. Eldridge](#) for procedural due process rights is unnecessary, and it suffices to consider factors laid out in [§ Barker](#) for Sixth Amendment speedy trial claims. U.S. Const. Amends. 6, 14; [§ Cal. Welf. & Inst. Code §§ 6601, 6602.5\(a\), 6603\(c\), 6604](#).

[6] **Criminal Law** [🔑](#) In general; balancing test

For claims alleging that pretrial delay violates Sixth Amendment right to speedy trial, courts cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate, and as a consequence, there is no fixed point in the criminal process when the State can put the defendant to the choice of either exercising or waiving the right to a speedy trial, and any inquiry into a speedy trial claim

necessitates a functional analysis of the right in the particular context of the case. U.S. Const. Amend. 6.

[7] **Criminal Law** [🔑](#) In general; balancing test

Factors for courts to examine, under [§ Barker](#), for Sixth Amendment speedy trial claims are: the length of the pretrial delay, the reason for the delay, the defendant's assertion of his right to a speedy trial, and prejudice to the defendant caused by the delay. U.S. Const. Amend. 6.

1 Case that cites this headnote

[8] **Criminal Law** [🔑](#) Presumptions and burden of proof

The defendant carries the burden of demonstrating a speedy trial violation under the [§ Barker](#) multifactor test. U.S. Const. Amend. 6.

1 Case that cites this headnote

[9] **Criminal Law** [🔑](#) In general; balancing test

Because none of the [§ Barker](#) factors for examining Sixth Amendment speedy trial claims is dispositive, courts must still engage in a difficult and sensitive balancing process to determine whether trial has been unconstitutionally delayed. U.S. Const. Amend. 6.

[10] **Criminal Law** [🔑](#) Nature and scope of remedy

The sole remedy for a Sixth Amendment speedy trial violation is dismissal of the prosecution, which is an unsatisfactorily severe remedy, but the only possible one. U.S. Const. Amend. 6.


[11] **Criminal Law** [🔑](#) Review De Novo
Criminal Law [🔑](#) Discretion of Lower Court
Criminal Law [🔑](#) Questions of Fact and Findings

Under the abuse of discretion standard of review, the trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.

1 Case that cites this headnote


[12] **Criminal Law** 🔑 Length of Delay

Criminal Law 🔑 Presumptions and burden of proof


The length of the pretrial delay, as  *Barker* factor for examining Sixth Amendment speedy trial claims, operates as a threshold hurdle, and until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance, but if the accused makes this showing, the court must then consider the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim. *U.S. Const. Amend. 6.*

[13] **Constitutional Law** 🔑 Commitment and confinement

Mental Health 🔑 Discharge or continued commitment

Length of pretrial delay, i.e., decade-plus delay before trial on State's petition for involuntary civil recommitment of convicted sex offender as sexually violent predator (SVP), seeking indefinite commitment under new version of statute that replaced two-year renewable commitment terms, was factor strongly weighing in favor of finding violation of due process right to timely trial; decade-plus delay was exceedingly lengthy. *U.S. Const. Amend. 14; Cal. Welf. & Inst. Code §§ 6600(a)(1), (b),*  6601, 6602.5(a), 6603(c), 6604, 6604.1(a).

[14] **Criminal Law** 🔑 Cause for delay, "good cause", and excuse or justification in general

In analyzing reasons for pretrial delay, as  *Barker* factor for examining Sixth Amendment speedy trial claims, courts examine whether government or criminal defendant is more to blame for delay, and courts also examine why delay occurred, because different weights should be assigned to different reasons; for instance, if government deliberately delays trial to hamper the defense, that effort at manipulation should be weighted heavily against government, while more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since ultimate responsibility for such circumstances must rest with government rather than with defendant, and a valid reason, such as a missing witness, should serve to justify appropriate delay, and if delay is attributable to defendant, then his waiver of right to speedy trial may be given effect under standard waiver doctrine. *U.S. Const. Amend. 6.*


2 Cases that cite this headnote

[15] **Criminal Law** 🔑 Delay caused by accused

In general, pretrial delays sought by defense counsel weigh against defendant's claim of Sixth Amendment speedy trial violation, and this rule flows from the ordinary principle that an attorney is client's agent when acting, or failing to act, in furtherance of the litigation, such that the client must assume the consequences of the attorney's delay. *U.S. Const. Amend. 6.*


[16] **Constitutional Law** 🔑 Commitment and confinement

When determining reasons for delay before trial on State's petition for involuntary civil commitment of convicted sex offender as sexually violent predator (SVP), as factor for analyzing whether due process right to timely trial has been violated, a court may take into account whether offender's absence from courtroom when offender's counsel waived time was unknowing or involuntary, or whether offender has demonstrated that counsel waived time against offender's wishes. *U.S. Const.*


Amend. 14; Cal. Welf. & Inst. Code §§ 6600(a)(1), (b),  6601, 6602.5(a), 6603(c), 6604.

[17] **Constitutional Law**  Commitment and confinement

Mental Health  Discharge or continued commitment


Mere fact that convicted sex offender had not personally appeared in court when his counsel waived time did not mean that those waivers should not be counted against offender when court analyzed reasons for delay before trial on State's petition for involuntary civil recommitment as sexually violent predator (SVP), as factor for deciding whether offender's due process right to timely trial was violated, which petition sought indefinite commitment under new version of statute that replaced two-year renewable commitment terms. U.S. Const. Amend. 14; Cal. Welf. & Inst. Code §§ 6600(a)(1), (b),  6601, 6602.5(a), 6603(c), 6604, 6604.1(a).

[18] **Constitutional Law**  Commitment and confinement

Because alleged sexually violent predators (SVP) have no duty to bring themselves to trial on State's petition for involuntary civil commitment, the State has a responsibility to ensure the case is moving forward to trial in a manner that is consistent with due process, and when faced with unwarranted delays or repeated continuances before trial, diligent prosecution of an SVP petition may necessitate objecting to the delays, insisting upon trial deadlines, and making the trial court aware of the length of time since the filing of the SVP petition or other pertinent details from the record. U.S. Const. Amend. 14; Cal. Welf. & Inst. Code §§ 6600(a)(1), (b),  6601, 6602.5(a), 6603(c), 6604.

1 Case that cites this headnote

[19] **Constitutional Law**  Commitment and confinement

Bad faith on the part of the prosecution, with respect to delay before trial on petition for involuntary civil commitment of convicted sex offender as sexually violent predator (SVP), is not necessary to establish a violation of the offender's due process right to timely trial. U.S. Const. Amend. 14; Cal. Welf. & Inst. Code §§ 6600(a)(1), (b),  6601, 6602.5(a), 6603(c), 6604.

[20] **Criminal Law**  Delay Attributable to Prosecution

Between diligent prosecution and bad-faith pretrial delay, official negligence in bringing an accused to trial occupies the middle ground when determining whether a defendant's Sixth Amendment right to speedy trial has been violated, and while negligence does not automatically compel relief in every case, neither is negligence automatically tolerable. U.S. Const. Amend. 6.

[21] **Criminal Law**  Constitutional guarantees; speedy trial in general

The trial court has an affirmative obligation, for a defendant's Sixth Amendment right to speedy trial, to bring the defendant to trial in a timely manner, and to that end, it is entirely appropriate for the court to set deadlines and to hold the parties strictly to those deadlines unless a continuance is justified by a concrete showing of good cause for the delay; the trial judge is the captain of the ship, and it goes without saying that the ship will go in circles if the crew is running around the deck with no firm marching orders. U.S. Const. Amend. 6.

[22] **Constitutional Law**  Commitment and confinement

For a convicted sex offender's due process right to timely trial on petition for involuntary civil commitment as sexually violent predator (SVP), trial courts have a number of tools available to fulfill their responsibility to advance the case to trial, and courts should make affirmative

inquiries about the procedural posture of the case and the status of counsel's trial preparation, should ask offenders about their wishes for timing of trial (or, if offender is not present, ask counsel whether there is ongoing communication with offender about their wishes regarding trial timing), should set date for trial within reasonable time from probable cause hearing, and should carefully examine propriety of continuing that date once it has been set. U.S. Const. Amend. 14; Cal. Welf. & Inst. Code §§ 6600(a)(1), (b), 6601, 6602.5(a), 6603(c), 6604.

[23] Constitutional Law 🔑 Commitment and confinement

Even when an alleged sexually violent predator (SVP) has entered a time waiver with respect to time for trial on petition for involuntary civil commitment, courts should remind the parties that a trial cannot be delayed indefinitely and must still be held within a reasonable timeframe, under due process principles. U.S. Const. Amend. 14; Cal. Welf. & Inst. Code §§ 6600(a)(1), (b), 6601, 6602.5(a), 6603(c), 6604.

[24] Mental Health 🔑 Hearing

Trial courts bear the critical duty of creating an adequate record to enable appellate review of any claims that trial, on a petition for involuntary civil commitment of a convicted sex offender as sexually violent predator (SVP), has been unconstitutionally delayed under due process principles, and avoidance of deficiencies in the record should be helped through careful adherence to the statutory requirements for written justification of pretrial continuances. U.S. Const. Amend. 14; Cal. Welf. & Inst. Code §§ 6600(a)(1), (b), 6601, 6602.5(a), 6603(c), 6604.

[25] Constitutional Law 🔑 Commitment and confinement

Mental Health 🔑 Discharge or continued commitment

Reasons for pretrial delay constituted factor weighing against finding that decade-plus delay in holding trial on State's petition for involuntary civil recommitment of convicted sex offender as sexually violent predator (SVP), which petition sought indefinite commitment under new version of statute that replaced two-year renewable commitment terms, violated offender's due process right to timely trial; while trial court could have done more to urge the case to trial and to enforce deadlines, the responsibility for delay rested primarily with the defense. U.S. Const. Amend. 14; Cal. Welf. & Inst. Code §§ 6600(a)(1), (b), 6601, 6602.5(a), 6603(c), 6604, 6604.1(a).

[26] Criminal Law 🔑 Demand for trial

Analysis of accused's assertion of right to timely trial, as *Barker* factor for determining whether pretrial delay violated Sixth Amendment right to speedy trial, does not hinge on number of times that accused acquiesced or objected to pretrial delays; rather, focus is on surrounding circumstances, such as timeliness, persistence, and sincerity of objections, reasons for acquiescence, whether accused was represented by counsel, accused's pretrial conduct (as that conduct bears on speedy trial right), and so forth, and totality of accused's responses to delay is indicative of whether he or she actually wanted speedy trial, and viewing complete picture matters because the more serious the deprivation of right to speedy trial, the more likely accused is to complain. U.S. Const. Amend. 6.

[27] Criminal Law 🔑 Demand for trial

Treating a defendant's assertion of or failure to assert his Sixth Amendment right to a speedy trial as just one factor in the *Barker* analysis, which factor is balanced against the others, gives flexibility that allows courts to attach a different weight to a situation in which the defendant knowingly fails to object from a situation in

which his attorney acquiesces in long delay without adequately informing his client, or from a situation in which no counsel is appointed. *U.S. Const. Amend. 6.*

[28] Criminal Law 🔑 Demand for trial

Failure of a defendant to assert the Sixth Amendment right to speedy trial will make it difficult for a defendant to prove that he was denied a speedy trial. *U.S. Const. Amend. 6.*

1 Case that cites this headnote


[29] Constitutional Law 🔑 Commitment and confinement

Mental Health 🔑 Discharge or continued commitment

Convicted sex offender's lack of assertion of right to timely trial was factor weighing against finding that decade-plus delay in holding trial on State's petition for involuntary civil recommitment of convicted sex offender as sexually violent predator (SVP), which petition sought indefinite commitment under new version of statute that replaced two-year renewable commitment terms, violated offender's due process right to timely trial; for a decade offender had not demanded trial, and there was no evidence that during offender's eight-year absence from court he had asked counsel to go to trial and had been ignored or that he had been unable to communicate with counsel. *U.S. Const. Amend. 14; Cal. Welf. & Inst. Code §§ 6600(a)(1), (b), 6601, 6602.5(a), 6603(c), 6604, 6604.1(a).*

1 Case that cites this headnote

[30] Criminal Law 🔑 Prejudice or absence of prejudice

Prejudice to defendant, as  *Barker* factor for determining whether defendant's Sixth Amendment right to speedy trial has been violated, should be assessed in light of the interests of defendants which the speedy trial right was designed to protect, and three such

interests are: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the defendant; and (iii) to limit the possibility that the defense will be impaired. *U.S. Const. Amend. 6.*

[31] Criminal Law 🔑 Prejudice or absence of prejudice

The possibility that the defense will be impaired is the most important interest covered by the Sixth Amendment speedy trial right, since impairment of the ability to present a defense skews the fairness of the entire system. *U.S. Const. Amend. 6.*

[32] Criminal Law 🔑 Prejudice or absence of prejudice

Not every case in which a defendant claims a violation of the Sixth Amendment right to speedy trial raises concerns about the possibility that the defense will be impaired, because a defendant may affirmatively deploy delay as a defense tactic. *U.S. Const. Amend. 6.*

[33] Criminal Law 🔑 Prejudice or absence of prejudice

Unlike the right to counsel or the right to be free from compelled self-incrimination, deprivation of the right to speedy trial does not per se prejudice the accused's ability to defend himself, but in many criminal cases, a period of lengthy pretrial delay may impose real detriment to an accused's ability to mount a defense, because defense witnesses may die, disappear, or lose their memory of the relevant events. *U.S. Const. Amends. 5, 6.*

[34] Criminal Law 🔑 Presumptions and burden of proof

For Sixth Amendment speedy trial claims, because time's erosion of exculpatory evidence and testimony can rarely be shown, courts generally have to recognize that excessive pretrial delay presumptively compromises the

reliability of a trial in ways that neither party can prove or, for that matter, identify, and accordingly, affirmative proof of particularized prejudice is not essential to every speedy trial claim, and while such presumptive prejudice cannot alone carry a Sixth Amendment claim, it is part of the mix of relevant facts, and its importance increases with the length of delay. U.S. Const. Amend. 6.

[35] Constitutional Law 🔑 Due process

Mental Health 🔑 Hearing

A presumption of trial prejudice is not applied when determining whether convicted sex offender's due process right to timely trial on State's petition for involuntary civil commitment as sexually violent predator (SVP) was violated; trial is aimed at establishing whether offender meets definition of SVP at time of trial, so time ordinarily will not erase critical evidence for the defense since jury relies on recent expert evaluations, and after probable cause hearing offender is confined at state hospital, not jail, and offender begins receiving mental health treatment while awaiting trial, which may ultimately facilitate offender's release before trial; disapproving of [People v. Tran](#), 276 Cal.Rptr.3d 603; [In re Butler](#), 269 Cal.Rptr.3d 649; [People v. Bradley](#), 264 Cal.Rptr.3d 819; [People v. DeCasas](#), 268 Cal.Rptr.3d 663; [People v. Superior Court \(Vasquez\)](#), 238 Cal.Rptr.3d 14. U.S. Const. Amend. 14; Cal. Welf. & Inst. Code §§ 6600(a)(1), (b), 6600.05(a), [6601](#), 6602(a), 6602.5(a), 6603(c), 6604.

1 Case that cites this headnote

[36] Constitutional Law 🔑 Commitment and confinement

Mental Health 🔑 Hearing

Determining how heavily to weigh the prejudice resulting from delay before trial on petition for involuntary civil commitment of convicted sex

offender as sexually violent predator (SVP), as factor for determining whether offender's due process right to timely trial has been violated, requires sensitive inquiry into circumstances of the case, and, for example, for offenders who have never received favorable expert evaluation, delay in holding trial will generally entail less prejudice than for offenders who have more substantial basis for arguing they do not satisfy criteria for SVP commitment, and where offender makes such showing, amount of prejudice may increase as length of the delay increases. U.S. Const. Amend. 14; Cal. Welf. & Inst. Code §§ 6600(a)(1), (b), [6601](#), 6602.5(a), 6603(c), 6604.

[37] Constitutional Law 🔑 Commitment and confinement


Mental Health 🔑 Hearing

Lack of appreciable prejudice to convicted sex offender was factor weighing against finding that decade-plus delay in holding trial on State's petition for involuntary civil recommitment of convicted sex offender as sexually violent predator (SVP), which petition sought indefinite commitment under new version of statute that replaced two-year renewable commitment terms, violated offender's due process right to timely trial; not until after about seven years of delay did one of four experts conclude, for first time ever, that offender no longer met criteria for commitment, with two experts suggesting that he might qualify for conditional release in future, and any prejudice was extenuated by offender's failure to show that he wanted timely trial. U.S. Const. Amend. 14; Cal. Welf. & Inst. Code §§ 6600(a)(1), (b), [6601](#), 6602.5(a), 6603(c), 6604, 6604.1(a).

[38] Constitutional Law 🔑 Commitment and confinement

Mental Health 🔑 Discharge or continued commitment

Under balancing of factors, decade-plus delay in holding trial on State's petition for involuntary

civil recommitment of convicted sex offender as sexually violent predator (SVP), which petition sought indefinite commitment under new version of statute that replaced two-year renewable commitment terms, did not violate offender's due process right to timely trial, though pretrial delay was extraordinarily lengthy and trial court could have done more to urge the case to trial and to enforce deadlines, where responsibility for delay was primarily attributable to the defense, offender did not demand trial, and prejudice to defendant was not appreciable. *U.S. Const. Amend. 14*; *Cal. Welf. & Inst. Code* §§ 6600(a) (1), (b),  6601, 6602.5(a), 6603(c), 6604, 6604.1(a).

[39] **Constitutional Law**  Commitment and confinement

Due process does not require a convicted sex offender's personal presence, regardless of the substance of the hearing, at every pretrial hearing regarding State's petition for involuntary civil commitment as sexually violent predator (SVP). *U.S. Const. Amend. 14*; *Cal. Welf. & Inst. Code* §§ 6600 et seq.

[40] **Constitutional Law**  Presence and Appearance of Defendant and Counsel

As a general rule, a criminal defendant has no due process right to be present at pretrial hearings unless his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge. *U.S. Const. Amend. 14*.

[41] **Constitutional Law**  Commitment and confinement

Mental Health  Discharge or continued commitment

Convicted sex offender's alleged due process right to procedural safeguards to ensure his consent to pretrial delays during his prolonged eight-year absence from pretrial hearings was not violated, in proceedings on State's petition

for involuntary civil recommitment as sexually violent predator (SVP), seeking indefinite commitment under new version of statute that replaced two-year renewable commitment terms, where there was no showing that absences were involuntary, or that offender's presence at hearings would have had reasonable, substantial relation to his opportunity to defend himself, or that his counsel acted against his wishes in seeking trial continuances during periods when offender was not personally present. *U.S. Const. Amend. 14*; *Cal. Welf. & Inst. Code* § 6603(c).

****490 ***497** Fifth Appellate District, F082798, Merced County Superior Court, [Ronald W. Hansen](#), Judge

Attorneys and Law Firms

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No appearance for Respondent.

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Opinion

Opinion of the Court by [Kruger, J.](#)

***367** The Sexually Violent Predator Act (SVP Act; *Welf. & Inst. Code*, § 6600 et seq.) authorizes the involuntary commitment of certain convicted sex offenders — termed “sexually violent predators,” or SVPs — who are found to have mental disorders that make them likely to reoffend after release from prison. This case concerns delays in holding trial on a petition for SVP commitment.

***368** Petitioner [Ciro Camacho](#) was first determined to be an SVP at a 2005 trial and was committed to the state hospital for a two-year term under the version of the statute then in force. The next year, the statute was amended to provide for indefinite commitment instead of renewable two-year terms. In 2007, before [Camacho's](#) two-year term ended, the state filed a recommitment petition seeking indefinite commitment

under the new version of the statute. Since then, the defense has repeatedly requested or agreed to continuances of the trial date, with the result that the trial on the recommitment petition has yet to occur. Camacho now argues that the extended pretrial delay violates his constitutional rights.

Although the Courts of Appeal have previously addressed similar claims, this case marks the first time this court has considered the constitutional framework for evaluating the timeliness of SVP trials. We now hold that persons facing SVP commitment have a due process right to a timely trial. But as is true in other contexts, whether pretrial delay violates that right depends in the first instance on the reasons for the delay. (¶ *Barker v. Wingo* (1972) 407 U.S. 514, 531, 92 S.Ct. 2182, 33 L.Ed.2d 101.) Here, while the decade-plus delay in holding Camacho's recommitment trial is extraordinarily lengthy, the available record shows that responsibility for the delay lies primarily with the defense, which either sought or agreed to the continuances that led to the delay. While many of the continuance requests were made by Camacho's counsel when Camacho was not personally present in court, the ordinary rule is that delays sought by counsel are attributable to their clients (¶ *Vermont v. Brillion* (2009) 556 U.S. 81, 85, 129 S.Ct. 1283, 173 L.Ed.2d 231), and the record reveals no basis to depart from that rule in this case. Camacho therefore has not established that the pretrial delay in this case resulted in a violation of his due process rights.

*****498** [1] Although we find no due process violation in the case before us, we underscore the vital role of trial courts in safeguarding the timely trial right of alleged SVPs. Involuntary commitment entails “a massive curtailment of liberty.” (¶ *Humphrey v. Cady* (1972) 405 U.S. 504, 509, 92 S.Ct. 1048, 31 L.Ed.2d 394.) In the context of SVP proceedings, the deprivation of liberty begins when a court finds probable cause to hold an alleged SVP in state custody pending trial. In making determinations that will affect when trial is held, the trial court must take due account of the individual's interests in prompt adjudication ****491** and take decisive steps to guard against unjustified delay.

I.

A.

The Legislature first enacted the SVP Act in 1995, expressing concerns about “a select group of criminal offenders who are extremely dangerous as ***369** the result of **mental impairment**, and who are likely to continue committing acts of sexual violence even after they have been punished for such crimes.” (¶ *Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1144, 81 Cal.Rptr.2d 492, 969 P.2d 584 (¶ *Hubbart*)). In its findings and declarations for the SVP Act, the Legislature described its intent to “identify these individuals prior to the expiration of their terms of imprisonment” and, if they are “found to be likely to commit acts of sexually violent criminal behavior beyond a reasonable doubt,” to ensure that they “be confined and treated until such time that it can be determined that they no longer present a threat to society.” (Stats. 1995, ch. 763, § 1, p. 5921.)

To be committed as an SVP, an individual must meet the SVP Act's definition of the term “[s]exually violent predator” : “[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.” (Welf. & Inst. Code, § 6600, subd. (a)(1); see *id.*, subd. (b) [defining “[s]exually violent offense” to include certain enumerated crimes “when committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person”].)¹

The statute sets forth extensive administrative and judicial procedures for determining whether an individual is properly classified as an SVP. The process typically begins while the individual is still serving a prison sentence for a sexually violent offense. At least six months before the individual's scheduled release date, the Department of Corrections and Rehabilitation conducts an initial screening of individuals who have committed a qualifying offense, using a standardized screening instrument to review the individual's “social, criminal, and institutional history.” (¶ Welf. & Inst. Code, § 6601, subd. (b).) If the initial screening indicates that the person is likely to be an SVP, the individual is referred to the California Department of State Hospitals (Department) for a full evaluation. (*Id.*, subds. (a)(1), (2), (b).) The Department designates two mental health evaluators, who must be practicing psychiatrists or psychologists and must use the Department's standardized assessment protocol. *****499** (*Id.*, subds. (c), (d).) If both mental health evaluators

agree the person meets the statutory definition of an SVP, then the Director of State Hospitals asks the state to file a petition for commitment. (*Id.*, subd. (d).) If the evaluators reach different conclusions, then two new evaluations are performed by independent mental health professionals. (*Id.*, subd. (e).) A ***370** petition for commitment may be filed only if the two new evaluators concur that the person meets the criteria for commitment. (*Id.*, subd. (f).)

Once the Director of State Hospitals has forwarded the evaluators' reports to the appropriate district attorney, the district attorney may file a petition for commitment. (¶ [Welf. & Inst. Code, § 6601, subd. \(h\)\(1\)](#).) The trial court then reviews the petition to determine whether it “contains sufficient facts that, if true, would constitute probable cause” that the person meets the definition of an SVP. (*Id.*, § 6601.5.) If the court answers that question in the affirmative, the court then must hold a probable cause hearing within 10 days, absent good cause for extending the time period. (*Id.*, §§ 6601.5, 6602, subd. (b).) In the meantime, the person must be detained in a secure facility. (*Id.*, § 6601.5.) If, after a hearing, the court finds probable cause to believe the individual is an SVP, the person is detained at the state hospital pending trial. (*Id.*, § 6602.5, subd. (a).)

****492 [2]** The statute does not specify a fixed deadline by which trial must occur. It does, however, lay out a number of procedural protections for the conduct of trial, including the right to a jury and to the assistance of counsel and relevant experts. ([Welf. & Inst. Code, § 6603, subd. \(a\)](#).) At trial, the state bears the burden of proving beyond a reasonable doubt that the person is an SVP. (*Id.*, § 6604.) Specifically, the state must prove four conditions are met: “(1) the person has previously been convicted of at least one qualifying ‘sexually violent offense’ listed in [[Welfare and Institutions Code](#)] section 6600, subdivision (b) [citation]; (2) the person has ‘a diagnosed mental disorder that makes the person a danger to the health and safety of others’ [citation]; (3) the mental disorder makes it likely the person will engage in future acts of sexually violent criminal behavior if released from custody [citation]; and (4) those acts will be predatory in nature.” (¶ [Walker v. Superior Court](#) (2021) 12 Cal.5th 177, 190, 283 Cal.Rptr.3d 296, 494 P.3d 2 (¶ [Walker](#))). The state must prove these conditions exist at the time of trial: A person is subject to SVP commitment only if the person is found to have a current diagnosed mental disorder and to pose a current risk to public safety. (¶ [Hubbart, supra](#), 19 Cal.4th at p. 1162, 81 Cal.Rptr.2d 492, 969 P.2d 584.)

If the individual is found at trial to be an SVP, the court then issues an order of commitment. ([Welf. & Inst. Code, § 6604](#); *id.*, § 6604.1, subd. (a).) As initially enacted, the SVP Act provided for renewable two-year commitment terms.

(¶ [People v. McKee](#) (2010) 47 Cal.4th 1172, 1183, 104 Cal.Rptr.3d 427, 223 P.3d 566 (¶ [McKee](#)), citing former [Welf. & Inst. Code, § 6604](#).) In 2006, however, voters passed Proposition 83 (Gen. Elec., Nov. 7, 2006), which replaced these renewable two-year terms with an indefinite commitment from which the individual can be released if it is shown that the individual no longer qualifies as an SVP. (See ¶ [McKee](#), at p. 1184, 104 Cal.Rptr.3d 427, 223 P.3d 566; see also ***371** [Welf. & Inst. Code, § 6604.1, subd. \(a\)](#).) Under this system, a person who is committed as an SVP must be reexamined annually by a qualified mental health professional to determine whether commitment is still appropriate. ([Welf. & Inst. Code, § 6604.9, subds. \(a\), \(b\)](#), added by Stats. 2013, ch. 182, § 1, p. 2256.) Depending on the results *****500** of the evaluation, the report may recommend unconditional discharge, conditional release with outpatient supervision and treatment in the community, or continued commitment at the state hospital. The person then may file a petition for release and, depending on the circumstances, may be entitled to a hearing at which the person has a right to appointed counsel and experts. ([Welf. & Inst. Code, § 6605, subd. \(a\)\(3\)](#); *id.*, § 6608, subds. (a), (g).)

If the annual report concludes the person is no longer an SVP, the Director of State Hospitals must authorize the committed person to petition for unconditional discharge. ([Welf. & Inst. Code, § 6604.9, subd. \(d\)](#).) After making an initial probable cause determination on the petition, the court holds a hearing — or, at the individual's request, a jury trial — at which the state bears the burden to prove beyond a reasonable doubt that the individual continues to meet the criteria for commitment as an SVP. (*Id.*, § 6605, subd. (a)(2), (3).)

A person may petition for conditional release whether or not the annual report recommends that course ([Welf. & Inst. Code, § 6608, subd. \(a\)](#)), but the recommendation determines how the petition will be handled. If the annual report recommends conditional release, then the state must show by a preponderance of the evidence at a release hearing that the individual is not, in fact, suitable for release. (*Id.*, § 6604.9, subd. (d); see *id.*, § 6608, subd. (k).) If, on the other hand, the annual report recommends continued commitment, the court screens the petition for frivolousness before holding

a hearing (*id.*, § 6608, subd. (a)), and at that hearing the individual bears the burden to show by a preponderance of the evidence that conditional release is appropriate. (*Id.*, subd. (k).) After one year on conditional release, the individual may petition for unconditional discharge from SVP commitment. (*Id.*, subd. (m).)

B.

In 1993, **Ciro Camacho** pleaded guilty to one count of continuous sexual abuse of a ****493** child in violation of [Penal Code section 288.5](#) and two counts of lewd acts on a child under 14 years old in violation of [Penal Code section 288, subdivision \(a\)](#). He was sentenced to 14 years in prison.

In August 2002, while Camacho was still serving his sentence, the state filed a petition to commit him as an SVP. Two doctors had evaluated ***372** Camacho and concluded he met the statutory criteria for SVP commitment. Camacho waived his right to a jury trial, and the trial court held a bench trial in January 2005. The court ordered Camacho committed to the state hospital for a two-year term under the version of the SVP Act then in effect.

The following year, Proposition 83 replaced the system of renewable two-year terms with the current system of indefinite commitments subject to annual reevaluations. (See [McKee, supra](#), 47 Cal.4th at pp. 1183–1184, 104 Cal.Rptr.3d 427, 223 P.3d 566.) On December 18, 2006, before Camacho's two-year term expired, the state filed a petition to recommit Camacho to an indefinite term. On February 8, 2007, Camacho waived the probable cause hearing on the recommitment petition. The trial on that petition has yet to occur. Camacho now challenges that delay as violating his due process right to a timely trial.

In the years since 2007, Camacho's case has appeared on the trial court docket and been continued more than 200 times without trial. Although the record of the proceedings is limited, the parties have stipulated to the relevant procedural history and the accuracy of the available record. Because Camacho's due process claim requires careful review of the relevant facts, *****501** we discuss this history in some detail below.

After waiving the probable cause hearing on the 2006 petition for recommitment, Camacho entered a general time waiver on

March 29, 2007, when he was personally present in court. He was then transported from the county jail to the state hospital.

On July 25, 2008, the Public Defender declared a conflict. The court assigned Attorney William Davis as replacement defense counsel. Davis would serve as Camacho's defense counsel for the next decade, until 2018.

Two updated doctors' reports became available in August 2008, both concluding that Camacho met the criteria for commitment. The court held 16 additional hearings in 2008, but the court did not set a trial date.

In 2009, Camacho's case appeared on the court docket 16 times. Camacho was present for 10 of these hearings. That year, two trial dates were set and later continued, with no record of the reason for these continuances. Camacho appeared in court for another trial setting conference on March 11, 2010. No trial date was set.

Between March 11, 2010, and July 5, 2018, Camacho's case appeared on the trial court docket 102 times. Camacho was not personally present at any of the hearings held during that eight-year period.

***373** In 2010, doctors again concluded that Camacho met the criteria for commitment as an SVP. The court did not set any additional trial dates in 2010. The minute orders from 2010 generally state “time waived.”

In 2011, the court held 15 hearings. On April 14, 2011, the court noted that Davis was “still [a]waiting confirmation of experts” and a general time waiver was in effect. No trial date was set in 2011. From 2012 to 2015, the court regularly called Camacho's case and set hearings, but the record shows no reason for the repeated continuances.

In 2015, four new doctors' reports were prepared. One of these reports concluded — for the first time — that Camacho no longer met the criteria for commitment. The other three reports, by contrast, concluded that Camacho continued to meet the SVP criteria.

Despite this development, 2016 continued in much the same vein as the preceding five years. The court held eight hearings that year without setting a trial date.

In 2017, Camacho's case appeared on the court docket 10 times, again with no trial date set and multiple continuances

granted at Davis's request. On March 22, 2018, the court called the case for a regular hearing. According to the reporter's transcript (one of the few available in this case), Davis informed ****494** the court Camacho was "at the hospital at Coalinga by his own choice." The District Attorney and Davis told the court they were mutually requesting a continuance, with Davis explaining "[t]here have been some statewide developments in these kinds of cases that [the prosecutor] and I have looked at."

The court held an in camera hearing on May 17, 2018. Davis waived Camacho's presence for that hearing and the court continued the case to June 21 to allow counsel to secure Camacho's appearance by video conference. Camacho did not appear on June 21, however, and Davis waived his presence "for today's hearing."

On July 5, 2018, the court held another in camera hearing. This time, Camacho was present by video. The prosecutor did not appear. At the hearing, Davis told Camacho that he had "placed calls" to three "psychologists or psychiatrists ... well qualified to assist us in this case." Camacho responded, "All right." Camacho *****502** then asked if he should send Davis letters that staff members at the hospital wanted to write "in [his] behalf." Davis said to "[g]o ahead" and asked if Camacho had his address. Camacho confirmed he did. The court then concluded, "All right. I'll find good cause to continue this to the 16th?" And Davis confirmed, "Yes."

***374** On September 20, 2018, the court held another hearing. Camacho was not present. Davis made "an oral motion to continue the matter" and the prosecutor objected — the first recorded objection to a continuance in the history of the case. The court overruled the objection and scheduled a trial setting conference in October.

The parties met again on October 4, 2018, with Camacho present by video conference. The parties discussed setting a trial date. Davis noted that Camacho "need[ed] to have additional evaluations" because the last doctors' reports were from 2015. Davis suggested March 5 for a jury trial. The prosecutor noted he had another trial on that date, but stated he was "available several weeks before that. And we are looking forward to moving this case forward to conclusion." Davis then suggested April for trial, and the prosecutor stated, "just for the record, I can do this significantly earlier," and "I'm not trying to delay the trial." Davis said he understood but that because of his preparation, April was best. The court set a trial date for April 2 and ordered monthly pretrial hearings.

After the date was set, the prosecutor said that since Camacho was present, he wanted to "clear up a few things." The prosecutor continued, "First off, the [d]efendant does have a right to a speedy trial in this matter within a reasonable time period. [¶] ... [¶] ... However, my understanding is the [d]efendant, having these rights in mind, is consenting to this date in April because he feels it's in his best interests." Davis responded that he had not "had a chance to discuss all of the things that [he] need[ed] to discuss with [Camacho]" and asked the court to order that Camacho be permitted to give Davis a phone call the next week to "go over all the issues necessary." The court asked if Camacho had heard everything and addressed Camacho directly as he summarized that the parties would reconvene two weeks later, so that "Mr. Davis can talk to you in more detail about what he's planning to do regarding your defense. And at that time you can decide if you want to ask for a speedy trial or if you're agreeable to putting it out longer, which is what has happened so far. [¶] But so far you're okay with everything?" Camacho replied, "Yes."

The court called Camacho's case again two weeks later, on October 18, 2018. Davis began the hearing by stating that Camacho "doesn't want to waive any more time." Davis referred to the Court of Appeal's then-recent decision in [People v. Superior Court \(Vasquez\) \(2018\) 27 Cal.App.5th 36, 238 Cal.Rptr.3d 14](#) ([People v. Vasquez](#)), which upheld the trial court's determination that a 17-year delay in holding an SVP trial violated due process because the delay had been caused by a "breakdown in the public defender system." ([Id.](#) at p. 41, 238 Cal.Rptr.3d 14.) The prosecutor responded he would not object to "resetting the trial within 60 days of today."

375** Camacho reiterated that he wanted "to apply this [Vasquez](#) case." Davis stated he was "assuming that means he wants another *495** attorney," and Camacho confirmed. Davis noted, "[Vasquez](#) does create some interesting issues ... part of the problem is that there is a systemic logistical problem ... everybody that has one of these petitions pending is held at Coalinga, which is a hundred miles from anywhere. Literally, anywhere else in the state."

*****503** Davis stated that "another issue" was that Camacho was "not sure that he wants to be brought to the county jail." The prosecutor again suggested that they set trial within 60 days. The court said it sounded like it was Camacho's "desire

to have a speedy trial in the matter” and they could set trial within 60 days and “come back in two weeks for a readiness conference.” Davis asked Camacho, “Do you want to be here in Merced County?” Camacho responded, “No. No. [¶] ... [¶] I want to stay here in Coalinga. [¶] ... [¶] ... I mean, how long is the trial going to be? If it's gonna be a while, then, yeah, I'll go to the county [jail]. But if it's just gonna be a ready conference, then send me back.” Davis and Camacho ultimately agreed to decide about transportation later and keep the April trial date. The prosecutor then reiterated that since “the defendant is requesting a speedy trial” he had no objection to “advancing [trial] to December 11th which is within 60 days of today.” The court set trial for December 11.

On November 6, 2018, the court held a readiness conference that began with Davis informing the court that Camacho wanted to “go ahead and make an oral motion ... to dismiss for a lack of prosecution.” The court agreed with Davis's recommendation to refer the motion to a different law firm, Fitzgerald, Alvarez & Ciummo, in order “to look into Mr. Camacho's claims pursuant to the [Vasquez](#) case.”

On November 29, 2018, Davis declared a conflict and was relieved by the court. Fitzgerald, Alvarez & Ciummo became Camacho's defense counsel for all purposes.

On March 11, 2021, Camacho filed a motion to dismiss the 2006 petition to extend commitment, claiming his right to due process had been violated “due to the excessive delay in bringing his matter to trial.” The trial court denied the motion to dismiss, describing the pretrial delay as “troubling,” but finding that “most of that [delay] is attributable to Mr. Camacho or his counsel.” Camacho then filed an original petition for a writ of mandate in the Court of Appeal.

The Court of Appeal denied Camacho's writ petition in an unpublished opinion, finding that although “ ‘substantial delays weigh in [Camacho]’s favor’ ... [¶] ... [¶] ... the record shows the delay was at Camacho's ***376** request or agreement,” such that his right to due process was not violated. The court explained that “[u]p to October 18, 2018, Camacho waived time repeatedly and requested or acquiesced to the numerous continuances, either in person or through his attorney.” Although the continuance requests were made by counsel without Camacho present, the court cited the “ ‘general rule’ ” that “ ‘ ‘delays caused by defense counsel are properly attributed to the defendant, even where counsel is assigned.’ ” ” The court further opined that while the length of Camacho's pretrial incarceration “ ‘constitutes some degree of

prejudice,’ ” the delay had not prejudiced Camacho's defense, reasoning that “the passage of time improved Camacho's prospects: the first medical evaluation opining that he no longer satisfied [the criteria for commitment] was prepared” in 2015.

II.

The issue of SVP trial delays is not new. Nearly 20 years ago, courts began to raise concerns that significant pretrial delays in SVP cases “can and do occur.” ([Litmon v. Superior Court](#) (2004) 123 Cal.App.4th 1156, 1170, 21 Cal.Rptr.3d 21 ([Litmon](#)); see [Orozco v. Superior Court](#) (2004) 117 Cal.App.4th 170, 179, 11 Cal.Rptr.3d 573 ([Orozco](#))). At the time, the courts' concern was that delays in holding trials to recommit ****504** SVPs sometimes matched or even exceeded the two-year commitment period prescribed by the law then in force. (*Ibid.*) Since the SVP Act was amended to provide for indefinite commitment terms, the issue of pretrial delay has not abated. Extended delays — in some cases upwards of a decade — have not been uncommon. ****496** ²

The reasons for delay in a given case vary, but certain features of the SVP Act help to explain why, in general, extended pretrial delays may be ***377** more likely to occur in SVP cases than in other cases. As an initial matter, SVP trials, unlike criminal trials and most types of civil trials, are not subject to statutory time limits. (See [Litmon, supra](#), 123 Cal.App.4th at pp. 1170–1171, 21 Cal.Rptr.3d 21; cf. [Pen. Code](#), § 1382, subd. (a)(2) [setting presumptive 60-day limit for trial in a criminal case]; [Code Civ. Proc.](#), § 583.310 [setting presumptive five-year limit for trial in a civil case].) This is not because the Legislature has been inattentive to questions of timing in SVP cases: In 1998, it set a 10-day limit for holding a pretrial probable cause hearing ([Welf. & Inst. Code](#), § 6601.5, as added by Stats. 1998, ch. 19, § 2, p. 145); more recently, it set limits on granting continuances and required that continuance requests be made in writing and supported by good cause. ([Welf. & Inst. Code](#), § 6603, subd. (c), as amended by Stats. 2019, ch. 606, § 1.) But despite various calls to set firm limits on the scheduling of trial, the Legislature has thus far declined to do so, instead choosing to give courts and parties greater flexibility in matters of trial timing. (See, e.g., [Litmon](#), at p. 1172, 21 Cal.Rptr.3d 21.)

More fundamentally, SVP trials are unlike criminal trials in that they are not aimed primarily at establishing an individual's liability for past events, but instead at establishing the individual's present need for mental health treatment. Although an SVP proceeding may involve inquiry into certain facts about an individual's criminal history (see, e.g., [Walker, supra](#), 12 Cal.5th at p. 185, 283 Cal.Rptr.3d 296, 494 P.3d 2), the central focus of an SVP trial is whether the individual currently has a mental disorder that poses a danger to the public and thus requires hospitalization ([Hubbart, supra](#), 19 Cal.4th at p. 1162, 81 Cal.Rptr.2d 492, 969 P.2d 584). Once a judge has found probable cause to believe ***505 an individual is an SVP, that individual is held in a state hospital and begins to receive mental health treatment — even before trial is ever held. For this reason, both sides may have a common interest in delaying trial. From the individual's perspective, allowing more time for treatment may ultimately improve the chance of success at trial, insofar as treatment may help address a mental disorder that a jury might otherwise find poses a risk to the public. (See, e.g., [In re Butler, supra](#), 55 Cal.App.5th at p. 635, 269 Cal.Rptr.3d 649 ([Butler](#))). While individuals committed as SVPs after trial may later petition for release, conditions are generally more favorable at the initial trial, where the state always bears the burden of proving beyond a reasonable doubt that the individual qualifies as an SVP. ([Welf. & Inst. Code, § 6604](#); cf. *id.*, §§ 6605, 6608 [describing procedures for postcommitment release].) For the state's part, there are limited incentives to expend the resources necessary to push the case toward trial when, following a finding of probable ***497 cause, the individual is already being hospitalized and receiving treatment.

Understanding why parties may have incentives to delay SVP trials in general does not, of course, tell us the reasons for delay in any particular case. Nor does the Legislature's choice to avoid imposing statutory time limits justify prolonged delay or tell us whether the delay is consistent with *378 an individual's constitutional rights. In recent years, the Courts of Appeal have confronted a number of cases calling for consideration of these questions. (See, e.g., [In re Kerins, supra](#), 89 Cal.App.5th 1084, 306 Cal.Rptr.3d 553 [14-year pretrial delay and extended absence from court did not violate due process], review granted; [People v. Tran, supra](#), 62 Cal.App.5th 330, 276 Cal.Rptr.3d 603 [11-year delay between petition for commitment and SVP retrial did not violate

due process]; [People v. Landau \(2013\) 214 Cal.App.4th 1, 9, 154 Cal.Rptr.3d 1](#) ([Landau](#)) [seven-year delay did not violate due process].) In three cases, courts found that extended delays violated the due process rights of alleged SVPs.

In the first of these cases, [Vasquez, supra](#), 27 Cal.App.5th 36, 238 Cal.Rptr.3d 14, the Court of Appeal reviewed the record of the 17-year delay in that case and affirmed the superior court's finding that delays sought by defense counsel could not be attributed to Vasquez himself, but instead resulted from an institutional breakdown related to budget cuts and understaffing in the public defender's office that handled his case. ([Id.](#) at pp. 54, 66, 238 Cal.Rptr.3d 14, citing [Vermont v. Brillon, supra](#), 556 U.S. at p. 94, 129 S.Ct. 1283 ([Brillon](#))). Concluding the delay violated Vasquez's due process right to a timely SVP trial, the court dismissed the petition for commitment.

Two years later, the appellate court in [People v. DeCasas, supra](#), 54 Cal.App.5th 785, 268 Cal.Rptr.3d 663 ([DeCasas](#)) confronted a 13-year delay caused by “the same reduction of the SVP unit staff” at the same public defender's office as in [Vasquez](#). ([DeCasas](#), at p. 809, 268 Cal.Rptr.3d 663.) Following the logic of [Vasquez](#), the court found a due process violation and dismissed the petition for commitment. ([Id.](#) at p. 813, 268 Cal.Rptr.3d 663.)

Finally, the court [in Butler, supra](#), 55 Cal.App.5th 614, 269 Cal.Rptr.3d 649 dismissed a petition for commitment after finding a due process violation based on pretrial delay. Though there were “several factors ... suggesting that the public defender's mismanagement of this case went beyond any particular attorney's performance,” the court found that even if those circumstances did not constitute systemic breakdown in the public defender's office, ***506 it would be “fundamentally unfair to hold Butler personally and solely accountable for delays caused by his counsel” where the record showed that counsel refused to convey Butler's explicit demands for trial, failed to demand a probable cause hearing or consult with a defense expert, and did not ever “come close to being ready for trial.” ([Id.](#) at p. 658, 269 Cal.Rptr.3d 649.)

In response to [Vasquez](#) and cases that followed, the Legislature amended the SVP Act to prescribe more demanding requirements for seeking and granting trial continuances. The statute now requires that motions for trial continuances be in writing, supported by good cause, and resolved in a timely manner. (Welf. & Inst. Code, § 6603, subd. (c), as amended by Stats. 2019, ch. ***379** 606, § 1.) While these amendments provide procedural safeguards against unwarranted delays, they do not address whether or when an SVP commitment trial may become untimely as a result of previously granted continuances.

III.

[3] [4] We turn, then, to the question before us, which concerns the constitutional principles governing the timeliness of SVP trials. The due process clauses of both the federal and state Constitutions forbid the state from depriving individuals of their liberty without due process of law. (U.S. Const., Amend. XIV, § 1; Cal. Const., art. I, § 7, subd. (a).)³ Civil commitment under the SVP ****498** Act undoubtedly involves “a significant deprivation of liberty.” ([People v. Otto](#) (2001) 26 Cal.4th 200, 209, 109 Cal.Rptr.2d 327, 26 P.3d 1061; see [Kansas v. Hendricks](#) (1997) 521 U.S. 346, 356–357, 117 S.Ct. 2072, 138 L.Ed.2d 501.) “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” ([Mathews v. Eldridge](#) (1976) 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 ([Mathews](#))). Thus, as every Court of Appeal to address the issue has agreed, individuals facing commitment under the SVP Act have a due process right to a timely trial. (See, e.g., [Orozco](#), *supra*, 117 Cal.App.4th at pp. 179–180, 11 Cal.Rptr.3d 573; [People v. Litmon](#) (2008) 162 Cal.App.4th 383, 395–399, 76 Cal.Rptr.3d 122 ([Litmon II](#)); [Landau](#), *supra*, 214 Cal.App.4th at p. 27, 154 Cal.Rptr.3d 1; [Butler](#), *supra*, 55 Cal.App.5th at p. 637, 269 Cal.Rptr.3d 649.)

[5] Although the appellate courts have agreed on this threshold point, they have expressed uncertainty about the appropriate framework for evaluating claims of excessive pretrial delay under the due process clause. (See, e.g., [Litmon II](#), *supra*, 162 Cal.App.4th at p. 399, 76 Cal.Rptr.3d 122 [noting the United States Supreme Court has not

addressed the issue].) In the absence of more specific guidance, the Courts of Appeal have uniformly borrowed the [Barker](#) framework used to adjudicate claims of speedy trial violations in criminal cases. ([Barker v. Wingo](#), *supra*, 407 U.S. 514, 92 S.Ct. 2182 ([Barker](#)); [People v. Williams](#) (2013) 58 Cal.4th 197, 165 Cal.Rptr.3d 717, 315 P.3d 1 ([Williams](#))).) But several courts, including the Court of Appeal in this case, have also applied the [Mathews](#) general balancing test used to evaluate the adequacy of governmental process under the federal due process clause. ([***507 Mathews](#), *supra*, 424 U.S. 319, 96 S.Ct. 893.) We now clarify that this general balancing under [Mathews](#) is unnecessary; it suffices to consider the factors laid out in [Barker](#) in deciding whether an alleged SVP has been deprived of the constitutional right to a timely trial.

***380** [6] In [Barker](#), the United States Supreme Court considered the scope of the right to a speedy criminal trial secured by the Sixth Amendment to the federal Constitution. The speedy trial right, the court observed, is a “slippery” one, “generically different from any of the other rights enshrined in the Constitution for the protection of the accused.” ([Barker](#), *supra*, 407 U.S. at pp. 522, 519, 92 S.Ct. 2182.) For one thing, the accused may not actually want a speedy trial and may perceive a tactical advantage in delay; in particular, the accused may believe that the passage of time will hurt the prosecution's ability to prove guilt more than it hurts the accused's ability to defend. ([Id.](#) at pp. 519–521, 92 S.Ct. 2182.) In this respect, the interests of the accused may not align with broader societal interests in the prompt resolution of criminal charges. ([Id.](#) at p. 519, 92 S.Ct. 2182; see [id.](#) at pp. 519–521, 92 S.Ct. 2182.) And “perhaps most importantly,” the court explained, “the right to speedy trial is a more vague concept than other procedural rights.” ([Id.](#) at p. 521, 92 S.Ct. 2182.) “We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate. As a consequence, there is no fixed point in the criminal process when the State can put the defendant to the choice of either exercising or waiving the right to a speedy trial. ... [A]ny inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case.” ([Id.](#) at pp. 521–522, 92 S.Ct. 2182, fn. omitted.)

[7] [8] [9] In keeping with these observations about the slippery nature of the speedy trial right, the *Barker* court declined to adopt any bright-line rules for determining when the right has been violated. The court instead identified four factors for courts to examine: the length of the pretrial delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant caused by the delay. (*Barker, supra*, 407 U.S. at p. 530, 92 S.Ct. 2182.) The defendant carries the “burden of demonstrating a speedy trial violation under *Barker*’s multifactor test.” (*Williams, supra*, 58 Cal.4th at p. 233, 165 Cal.Rptr.3d 717, 315 P.3d 1.) Because none of these factors is dispositive, “courts must still ****499** engage in a difficult and sensitive balancing process” to determine whether trial has been unconstitutionally delayed. (*Barker, at* p. 533, 92 S.Ct. 2182.)

Although *Barker* concerned the constitutional right to a speedy trial in a criminal case, courts have employed *Barker*’s flexible, four-factor inquiry to evaluate claims of unconstitutional delay in other contexts. (See, e.g., *United States v. \$8,850* (1983) 461 U.S. 555, 564, 103 S.Ct. 2005, 76 L.Ed.2d 143 [applying *Barker* test to evaluate pretrial delay in civil forfeiture case]; *DeLancy v. Caldwell* (10th Cir. 1984) 741 F.2d 1246, 1247–1248 (per curiam) [applying *Barker* factors to review delay in furnishing trial transcript to be used by incarcerated criminal defendant on appeal]; see also *U.S. v. Sanders* (6th Cir. 2006) 452 F.3d 572, 577 [holding that *Barker* applies to due process claims based on postsentencing delays, and citing similar cases from other circuits]; cf. *Betterman v. Montana* (2016) 578 U.S. 437, 448, fn. 12, 136 S.Ct. 1609, 194 L.Ed.2d 723 (*Betterman*) [reserving the question of ***381** how the due process clause applies to claims based on postsentencing delays, but noting that “[r]elevant considerations may include the length of and reasons for delay, the defendant’s *****508** diligence in requesting expeditious sentencing, and prejudice”].)

The *Barker* factors are likewise appropriate for use in evaluating due process claims based on delays in holding SVP trials. The timing of SVP trials is not in all respects comparable to the timing of criminal trials, but many of the same general principles translate. Once a court has found

probable cause to support an SVP commitment petition, an individual is committed to a state hospital for treatment while awaiting trial. But as is true in criminal cases, an individual's interests in a timely trial do not run in just one direction; one individual facing SVP commitment may wish for a prompt trial, while another may perceive a tactical advantage in delay. (See *Barker, supra*, 407 U.S. at pp. 519–521, 92 S.Ct. 2182.) And, more fundamentally, as is true in criminal cases, it is impossible to define with any precision a fixed point at which trial must occur — “how long is too long in a system where justice is supposed to be swift but deliberate.” (*Id. at* p. 521, 92 S.Ct. 2182.) The *Barker* test outlines a broadly relevant set of functional, case-dependent factors to consider in analyzing questions of trial timing. To the extent the SVP context differs from the criminal context in which *Barker* was decided, the flexibility of the test allows courts to account for those differences.

Indeed, every Court of Appeal to address the issue to date has done so by employing the *Barker* factors.⁴ But in an abundance of caution, some have also employed the *Mathews* test to evaluate claims of SVP trial delay.

The issue in *Mathews* was whether due process required an evidentiary hearing before the termination of Social Security disability payments. (*Mathews, supra*, 424 U.S. at p. 323, 96 S.Ct. 893.) The United States Supreme Court set out a three-factor framework to decide the question: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government's interest, including the function involved and the fiscal and ***382** administrative burdens that the additional or substitute procedural requirement would entail.” (*Id. at* p. 335, 96 S.Ct. 893.) With its focus on evaluating the value of additional procedural safeguards for the sake of reducing error, this test is more clearly suited to questions about the adequacy of procedures used in government decisionmaking than to questions about the timing of those decisions.

****500** To be sure, the United States Supreme Court has invoked *Mathews* in evaluating certain timing-related claims. In *FDIC v. Mallen* (1988) 486 U.S. 230, 231–

232, 242, 108 S.Ct. 1780, 100 L.Ed.2d 265, for instance, the high court employed a modified version of the *Mathews* test in considering, and rejecting, a claim that a statute allowing the government to suspend indicted ***509 bank officials facially violated due process because the statute did not guarantee that suspended officials would receive sufficiently prompt decisions on their appeals. (See *Litmon II*, *supra*, 162 Cal.App.4th at pp. 396–397, 76 Cal.Rptr.3d 122 [discussing *Mallen*].)

[10] But the trial timing question here bears far greater resemblance to the trial timing question in *Barker* than to the question in *Mallen* about the adequacy of postsuspension review procedures. And it serves no meaningful purpose to analyze pretrial delays under both *Mathews* and *Barker*, as some Courts of Appeal have done. None of these courts has ever found that the *Mathews* inquiry yields a different result from *Barker*. This is unsurprising, since the questions the courts have asked under *Mathews* — adapting the three-part test for the context of a challenge to trial timing — are all matters already addressed, with somewhat greater specificity, by the *Barker* factors. We thus clarify that courts need not apply *Mathews* in this context; it suffices to apply the *Barker* factors in considering whether pretrial delay in an SVP case has resulted in a denial of due process.⁵

*383 IV.

[11] With this background in mind, we turn to Camacho's due process claim. The Court of Appeal in this case reviewed the trial court's denial of relief for abuse of discretion. Under that standard, “[t]he trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.” (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711–712, 76 Cal.Rptr.3d 250, 182 P.3d 579, fns. omitted.) Neither party here contends we should employ a different standard of review. Ultimately, however, the standard of review is not dispositive, because Camacho fails to establish a due process violation under any possible standard.

A.

[12] We begin with the first *Barker* factor, the length of the pretrial delay. ***510 This factor operates as a threshold hurdle; “[u]ntil there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.” (*Barker, supra*, 407 U.S. at p. 530, 92 S.Ct. 2182.) “If the accused makes this showing, ***501 the court must then consider ... the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim.” (*Doggett v. United States* (1992) 505 U.S. 647, 652, 112 S.Ct. 2686, 120 L.Ed.2d 520 (*Doggett*).)

[13] Here, Camacho awaits trial on a petition for recommitment that was filed in 2006. Although this delay is not entirely out of line with delays seen in other SVP cases, it is an exceedingly lengthy delay all the same. The Attorney General contends that our inquiry should focus more narrowly on the eight-year period from 2010 to 2018, when Camacho did not personally appear in court. The Attorney General notes that Camacho “makes no real effort to establish that he was denied his speedy trial right between 2006 and 2010,” when Camacho frequently appeared personally in court and had entered a general time waiver. The Attorney General concedes, however, that an eight-year delay is “significant” in its own right, and so “the length of the delay weighs in Camacho's favor.” We agree; the first *Barker* factor unquestionably supports Camacho's claim of a constitutional timely trial violation.

B.

We next turn to the second *Barker* factor, the reasons for the delay. This is the “flag all litigants seek to capture” (*United States v. Loud Hawk* (1986) 474 U.S. 302, 315, 106 S.Ct. 648, 88 L.Ed.2d 640) because the permissibility of pretrial delay depends to a great extent on who bears responsibility for it and why.

[14] In analyzing the second factor, courts examine “whether the government or the criminal defendant is more to blame for th[e] delay.” (*Doggett, supra*, 505 U.S. at p. 651, 112 S.Ct.

2686; [Barker, supra](#), 407 U.S. at p. 530, 92 S.Ct. 2182.) Courts also examine why the delay occurred, for “different weights should be assigned to different reasons.” ([Barker, at p. 531, 92 S.Ct. 2182.](#)) If the government deliberately delays trial to hamper the defense, for instance, that effort at manipulation “should be weighted heavily against the government.” ([Ibid.](#)) “A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.” ([Ibid.](#)) By contrast, “if delay is attributable to the defendant, then his waiver [of his right to a speedy trial] may be given effect under standard waiver doctrine.” ([Id. at p. 529, 92 S.Ct. 2182; accord, Brillon, supra, 556 U.S. at p. 90, 129 S.Ct. 1283.](#))

Our analysis of the reasons for delay in this case is hampered to some extent by the limited record before us. We emphasize that trial courts have a responsibility to maintain an adequate record for review. The parties have, however, stipulated to an undisputed record that forms a sufficient basis for our opinion today. In the majority of the hearings at which delays were sought and granted, the record does not identify the party that requested the continuance. But in every instance where the available record identifies the party moving for a continuance, the record shows that it was defense counsel — either alone, or jointly with the People. The record also does not show a single instance of the defense objecting to a continuance. In other words, as far as the record shows, virtually *****511** all the delays in this case were either sought by the defense or agreed to by the defense, and no continuances were requested solely by the People. Camacho does not contend otherwise. Against that backdrop, we assess the conduct of the defense, the prosecution, and the trial court in turn.

1.

It is undisputed that Camacho — either personally or through counsel — either sought or agreed to most of the delay in this case. The central point of dispute between the parties is whether we should distinguish between those delays Camacho personally agreed to and those to which his counsel assented on his behalf, particularly during the eight-year period when Camacho did not personally appear in court.

***385 **502 [15]** In general, delays sought by the defendant's counsel weigh against the defendant's claim of a speedy trial violation. ([Brillon, supra, 556 U.S. at pp. 90–91, 129 S.Ct. 1283.](#)) This rule flows from the ordinary principle that an “ ‘attorney is the [defendant's] agent when acting, or failing to act, in furtherance of the litigation,’ ” such that the client must assume the consequences of the attorney's delay. ([Ibid.](#), quoting [Coleman v. Thompson \(1991\) 501 U.S. 722, 753, 111 S.Ct. 2546, 115 L.Ed.2d 640 \(Coleman\).](#))

Applying this principle in [Brillon, supra, 556 U.S. 81, 129 S.Ct. 1283](#), the United States Supreme Court reversed a state court's decision that pretrial delay should be charged against the state when the blame for the delay lay with court-appointed counsel for an indigent criminal defendant. ([Id. at p. 92, 129 S.Ct. 1283.](#)) The high court explained that “assigned counsel generally are not state actors for purposes of a speedy-trial claim. ... [¶] ... Their ‘inability or unwillingness ... to move the case forward,’ [citation], may not be attributed to the State simply because they are assigned counsel.” ([Id. at pp. 92–93, 129 S.Ct. 1283, fn. omitted.](#)) The court noted that the analysis might be different if, as Brillon had argued, the delay was shown to result from “a systemic ‘breakdown in the public defender system.’ ” ([Id. at p. 94, 129 S.Ct. 1283.](#)) But, the court observed, the Vermont Supreme Court had “made no determination, and nothing in the record suggest[ed], that institutional problems caused any part of the delay in Brillon's case.” ([Ibid.](#))

In Camacho's case, the Court of Appeal concluded that “the record contains substantial evidence that the delay was ‘the result of defense counsel's agreement or ... explicit request.’ ”

The court cited [Brillon's](#) holding that delays caused by defense counsel are ordinarily charged to the defendant. The court acknowledged the high court's suggestion that delay caused by appointed counsel could be charged to the state if there was a systemic breakdown in the public defender system, citing [Vasquez, supra, 27 Cal.App.5th 36, 238 Cal.Rptr.3d 14](#) and [DeCasas, supra, 54 Cal.App.5th 785, 268 Cal.Rptr.3d 663](#). But the court noted that in Camacho's case “the record does not support such a finding.”

[16] Camacho argues the Court of Appeal mistakenly construed [Brillon](#) to mean that delay caused by defense counsel may be charged against the state *only* when there is a systemic breakdown of the public defender system and under no other circumstances. It is unclear whether the appellate court so held or was simply responding to what it understood as Camacho's argument that there had been an "institutional breakdown." In any event, like Camacho, we do not read [Brillon](#) as standing for any such broad proposition; ***512 [Brillon](#) addressed a hypothetical systemic breakdown of the public defender system because that was the argument presented in the case. The Attorney General, for his part, acknowledges that a constitutional problem might arise if Camacho had shown "that, during the eight years at issue, his absence from *386 the courtroom had been unknowing or involuntary, or if Camacho had demonstrated that his attorney had waived time against Camacho's wishes." In those circumstances, "the People would likely agree that Camacho suffered a due process violation." (Cf. [Butler](#), *supra*, 55 Cal.App.5th at p. 658, 269 Cal.Rptr.3d 649 [finding due process violation where alleged SVP explicitly demanded trial and defense counsel failed to convey those demands to the court or make progress towards trial].) We, too, agree that [Brillon](#) does not prevent a court from taking such matters into account.

[17] Still, Camacho provides no sufficient reason for us to depart from the ordinary rule that delays sought by counsel are attributed to their client. ([Brillon](#), *supra*, 556 U.S. at p. 90, 129 S.Ct. 1283.) Camacho does not allege that his eight-year absence from court was involuntary. Nor does he allege that his attorney waived time against his express wishes. His argument is, instead, that delays sought by defense counsel during a period when he did not personally appear in court should not count against him, solely by virtue of his absence.

We reject this broad argument. (See [People v. Blacksher](#) (2011) 52 Cal.4th 769, 799, 130 Cal.Rptr.3d 191, 259 P.3d 370 [finding the defendant's absence from 17 pretrial proceedings did not violate **503 constitutional right to be present and noting that most of the proceedings "concerned routine legal and procedural matters"].)

There is no reason why, standing alone, absence from court would relieve an individual of responsibility for delays sought by counsel who was acting as the individual's agent.

([Coleman](#), *supra*, 501 U.S. at p. 753, 111 S.Ct. 2546.)

Of course, an individual's extended absence from court may raise concerns about whether the individual's wishes about timing have been adequately considered; when an individual is absent from court, it becomes more difficult to evaluate whether the individual has been adequately informed about and agrees with counsel's proposed approach to trial timing. Here, however, the record contains no indication that Camacho was inadequately informed of — much less disagreed with — counsel's approach to trial timing during his eight-year absence from court.

Although Davis at one point referenced Camacho's remote location as an obstacle to trial preparation, there is nothing in the record to indicate Davis and Camacho faced substantial obstacles in communicating in general.⁶ The continuances and time ***513 waivers during the period when Camacho was absent *387 from court were consistent with continuances and waivers that had been entered before 2010, when Camacho did regularly appear in court. And Camacho's first reappearance in court after eight years was uneventful. On that date, Camacho did not assert his timely trial rights, complain about his absence from court, or otherwise express dissatisfaction with the progress of his case. He also confirmed that he had Davis's mailing address, which, if nothing else, suggests he had an available method of communicating with Davis about any concerns he may have had.

In sum, we agree with Camacho that an extended absence from court could raise concerns about an SVP's opportunity to complain about attorney-sought delay, but we conclude that absence alone does not provide a sufficient basis to depart from the ordinary rule that delays sought by attorneys are properly attributed to the clients they represent. On the available record, Camacho bears most of the responsibility for the delay he now challenges.

2.

While the People were not primarily responsible for the delay in the case, the record also shows the People made little effort to move the case toward trial. The Attorney General acknowledges as much, explaining that "[a]t least until the September 2018 decision in [Vasquez](#), the People were amenable in many cases — including Camacho's — to the defendant's desire to delay trial for the purpose of progressing in treatment. If, before the case went to trial, the individual

progressed in treatment to the point where he was no longer a danger to public safety, the People could simply dismiss the case.”

Although this policy of acquiescence is perhaps understandable, it also carries important risks and drawbacks. For one thing, it invites reliance on the assumption that when the defense repeatedly requests continuances, it is because the alleged SVP has decided to indefinitely delay trial for the purpose of progressing in treatment. Though this may be true of some alleged SVPs, it may not be true of other individuals, and individual preferences may change over time. (See, e.g., [Butler, supra](#), 55 Cal.App.5th at pp. 635, 636, 269 Cal.Rptr.3d 649 [noting alleged SVP “made sincere and repeated demands **504 for a speedy trial ... throughout his 12-year period of detention awaiting trial” and his “public defenders essentially ignored and disregarded his demands for a *388 timely trial” by never communicating those demands in court].) For another, permitting the alleged SVP to indefinitely delay trial discounts the broader societal interest in timely, definitive decisions about whether individuals satisfy the criteria for involuntary commitment — where commitment necessarily comes at taxpayer expense and carries personal costs for families and communities from whom the individual will remain indefinitely separated.

[18] Because alleged SVPs have no duty to bring themselves to trial, the government has a responsibility to ensure the case is moving forward in a manner that is consistent with due process. When faced with unwarranted delays or repeated continuances, “diligent prosecution of an SVP petition may necessitate objecting to the delays, insisting upon trial deadlines, and making the trial court aware of the length of time since the filing of the SVP petition or other pertinent details from the record.” ([Butler, supra](#), 55 Cal.App.5th at p. 655, 269 Cal.Rptr.3d 649.)

[19] [20] In this case, the Court of Appeal observed that “[n]othing in the record suggests that the prosecution engaged in ***514 deliberate delay tactics or acted in bad faith.” We agree with the court's conclusion in this regard, and Camacho does not dispute that reading of the record. He argues, however, that the Court of Appeal erred in implicitly requiring a showing of bad faith to prevail on a timely trial claim. To the extent that the Court of Appeal's opinion may be construed as applying such a rule, we agree with Camacho that bad faith on the part of the prosecution is not necessary to establish a constitutional violation. As the United States Supreme Court

recognized in [Doggett](#), “Between diligent prosecution and bad-faith delay, official negligence in bringing an accused to trial occupies the middle ground. While not compelling relief in every case where bad-faith delay would make relief virtually automatic, neither is negligence automatically tolerable.” ([Doggett, supra](#), 505 U.S. at pp. 656–657, 112 S.Ct. 2686.)

Ultimately, though the People should have exhibited greater diligence in ensuring Camacho was timely brought to trial, the record shows that the People do not bear most of the responsibility for the delays; as discussed above, the responsibility falls primarily with the defense.

3.

[21] We now assess the trial court's responsibility for the delay. In the criminal context, this court has recognized that the trial court “ ‘has an affirmative constitutional obligation to bring the defendant to trial in a timely manner. [Citation.] And to that end, it is entirely appropriate for the court to set deadlines and to hold the parties strictly to those deadlines unless a continuance is justified by a concrete showing of good cause for the delay. *389 [Citation.] The trial judge is the captain of the ship; and it goes without saying that the ship will go in circles if the crew is running around the deck with no firm marching orders.’ ” ([Williams, supra](#), 58 Cal.4th at p. 251, 165 Cal.Rptr.3d 717, 315 P.3d 1, quoting *State v. Couture* (2010) 357 Mont. 398, 427, 240 P.3d 987.)

Camacho's case did indeed go in circles, and the trial court appears to bear some responsibility. From the limited available record, it appears the trial court allowed long periods of time to elapse without setting a trial date at all; if the trial court made efforts to move the case along, they are not apparent.

The Attorney General argues that the trial court's conduct is “more properly characterized as acceding in Camacho's desire to delay trial rather than as negligence.” But what we have said of the People is equally true of the trial court: There are risks and drawbacks to a policy of readily acceding to an alleged SVP's perceived wishes to delay trial. Because trial courts ultimately control when trial will be held, they bear particular responsibility for preserving an alleged SVP's constitutional right to a timely trial.

[22] Trial courts have a number of tools available to fulfill their responsibility to advance a case to trial in a timely manner. ****505** Courts should make affirmative inquiries about the procedural posture of a case and the status of counsel's trial preparation; ask alleged SVPs about their wishes for the timing of trial (or, if the alleged SVP is not present, ask counsel whether there is ongoing communication with the alleged SVP about their wishes regarding trial timing); set a date for trial within a reasonable time from the probable cause hearing; and carefully examine the propriety of continuing that date once it has been set. As in the criminal context, it is “ ‘entirely appropriate for the court to set deadlines and to hold the parties strictly to those deadlines.’ ” (Williams, supra, 58 Cal.4th at p. 251, 165 Cal.Rptr.3d 717, 315 P.3d 1.)

*****515** [23] Indeed, the recent amendments to the SVP Act now require the court to proceed with a trial date, once set, unless a continuance is justified by good cause. (Welf. & Inst. Code, § 6603, subd. (c).) To show good cause, the parties must provide written materials that detail “specific facts showing that a continuance is necessary.” (Ibid.) What constitutes good cause will vary from case to case, but a party's showing of good cause should generally demonstrate due diligence in preparing for trial. Any continuance shall last “only for the period of time shown to be necessary” by the specific factual circumstances justifying the continuance. (Id., subd. (c)(7).) Even when an alleged SVP has entered a time waiver, courts should remind the parties that a trial cannot be delayed indefinitely and must still be held within a reasonable timeframe.

[24] Trial courts also bear the critical duty of creating an adequate record to enable review of any claims that trial has been unconstitutionally delayed. ***390** The limitations in the record of this case make our review challenging; such record deficiencies are to be avoided in future cases, and should be helped through careful adherence to the requirements of written justification under Welfare and Institutions Code section 6603, subdivision (c).⁷

[25] Limited though the record may be in this case, however, both parties have stipulated to a joint version of events and the available record supplies a sufficient basis for our decision today. On this record, while the court certainly could have done more to urge the case to trial and enforce deadlines, the responsibility for the delay rests primarily with the defense.

The second Barker factor thus weighs against finding a violation of his constitutional right to a timely trial.

C.

[26] Analysis of the third Barker factor, the petitioner's assertion of his right to a timely trial, does not hinge on “ ‘the number of times the accused acquiesced or objected; rather, the focus is on the surrounding circumstances, such as the timeliness, persistence, and sincerity of the objections, the reasons for the acquiescence, whether the accused was represented by counsel, the accused's pretrial conduct (as that conduct bears on the speedy trial right), and so forth. [Citation.] The totality of the accused's responses to the delay is indicative of whether he or she actually wanted a speedy trial.’ ” (Williams, supra, 58 Cal.4th at p. 238, 165 Cal.Rptr.3d 717, 315 P.3d 1, quoting State v. Couture, supra, 357 Mont. at p. 417, 240 P.3d 987.) Viewing the complete picture matters because “[t]he more serious the deprivation [of the right to a speedy trial], the more likely a defendant is to complain.” (Barker, supra, 407 U.S. at p. 531, 92 S.Ct. 2182.)

[27] [28] It bears some emphasis that assertion of the right is only one factor in the analysis, and not a dispositive one; in Barker, the court explicitly rejected the argument that a defendant must expressly demand a speedy trial or else be deemed to have waived the right. (Barker, supra, 407 U.S. at p. 528, 92 S.Ct. 2182.) Instead, the court instructed that “the defendant's assertion of or failure to assert his right to a speedy ****506** trial” is just one factor to balance against the others and must be evaluated *****516** in a holistic manner. (Ibid.) This flexibility allows courts “to attach a different weight to a situation in which the defendant knowingly fails to object from a situation in which his attorney acquiesces in long delay without adequately informing his client, or from a situation in which no counsel is appointed.” (Id. at p. 529, 92 S.Ct. 2182.) The high court ***391** emphasized, however, that “failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.” (Id. at p. 532, 92 S.Ct. 2182.)

[29] According to the available record, Camacho first demanded trial in October 2018. Camacho did not demand

trial at any point over the previous decade, including in July 2018, when he made his first court appearance in eight years. There is no evidence that he previously asked Davis to go to trial and was ignored; nor does he allege an inability to communicate with Davis during his eight-year absence from court. Camacho was free to offer evidence that defense counsel acted against his wishes in delaying trial when he filed his motion to dismiss, but he did not do so. In sum, there is no evidence that Camacho sought to go to trial before October 2018 and was prevented from exercising his right to do so. On this record, we are not persuaded that Camacho desired trial before October 2018 and we conclude this [Barker](#) factor weighs against his claim of a due process violation.

D.

[30] The final [Barker](#) factor is the prejudice to the defendant caused by the delay in bringing the case to trial. “Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect.” ([Barker, supra](#), 407 U.S. at p. 532, 92 S.Ct. 2182.) In the criminal context, the court has identified “three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.” ([Ibid.](#)) In the SVP context, we consider the same interests, but acknowledge differences in how the interests arise.

[31] [32] [33] [34] We begin with the “most serious” interest: the “possibility that the defense will be impaired.” ([Barker, supra](#), 407 U.S. at p. 532, 92 S.Ct. 2182.) The [Barker](#) court identified this as the most important interest covered by the Sixth Amendment speedy trial right, since impairment to an individual’s ability to present a defense “skews the fairness of the entire system.” ([Barker](#), at p. 532, 92 S.Ct. 2182.) Of course, not every case raises such concerns; indeed, a criminal defendant may affirmatively deploy delay as a “defense tactic.” ([Id.](#) at p. 521, 92 S.Ct. 2182.) “[U]nlike the right to counsel or the right to be free from compelled self-incrimination, deprivation of the right to speedy trial does not *per se* prejudice the accused’s ability to defend himself.” ([Ibid.](#))

But in many criminal cases, a period of lengthy pretrial delay may impose real detriment to an individual’s ability to mount a defense; defense witnesses may die, disappear, or lose their memory of the relevant events. ([Id.](#) at p. 532, 92 S.Ct. 2182.) Because “time’s erosion of exculpatory evidence and testimony ‘can rarely be shown’ ... we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can *392 prove or, for that matter, identify.” ([Doggett, supra](#), 505 U.S. at p. 655, 112 S.Ct. 2686, quoting [Barker](#), at p. 532, 92 S.Ct. 2182.) Accordingly, in the criminal context, “[a]ffirmative proof of particularized prejudice is not essential to every speedy trial claim’ ... ‘[w]hile such presumptive prejudice cannot alone carry a Sixth Amendment claim ... it is ***517 part of the mix of relevant facts, and its importance increases with the length of delay.’ ” ([People v. Horning](#) (2004) 34 Cal.4th 871, 892, 22 Cal.Rptr.3d 305, 102 P.3d 228, quoting [Doggett](#), at pp. 655–656, 112 S.Ct. 2686.)

[35] There is little reason, however, to apply a presumption of trial prejudice in the SVP context. As previously noted, trial on a petition for commitment under the SVP Act aims to establish whether a person meets the definition of an SVP *at the time of trial*. This inquiry is categorically different from that of a criminal trial, where the issue is whether the defendant’s past conduct constitutes guilt **507 of a particular offense. In the SVP context, then, time ordinarily will not erase critical evidence for the defense, since the jury relies on recent expert evaluations to evaluate whether the individual qualifies as an SVP at the time of trial. In Camacho’s case, for example, though his defense may suffer if the author of the favorable 2015 report recommending release became unavailable to testify, that evidence is unlikely to be dispositive. Camacho will still need updated evaluations by mental health experts before he can proceed to trial. Mental status may fluctuate over time, and the jury will focus on the most recent evidence to determine whether the alleged SVP meets the commitment criteria at the time of trial. Severe prejudice to the alleged SVP’s defense is less likely to result purely as a function of the passage of time; as a result, no presumption of prejudice applies in this context.⁸

In addition to prejudice at trial, the [Barker](#) court identified “oppressive pretrial incarceration” and the “anxiety and concern of the accused” as two other threats the speedy trial right was designed to ward against. ([Barker, supra](#), 407

U.S. at p. 532, 92 S.Ct. 2182.) The court observed that “time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs.” (¶ *Ibid.*)

Being held in anticipation of an SVP trial, like pretrial detention in a jail, unquestionably entails a severe and oppressive restriction on liberty that may give rise to feelings of anxiety and concern. (¶ *393 *Addington v. Texas* (1979) 441 U.S. 418, 425–426, 99 S.Ct. 1804, 60 L.Ed.2d 323 [noting it is “indisputable that involuntary commitment to a mental hospital ... can engender adverse social consequences to the individual”].) But pretrial SVP custody does differ from pretrial criminal detention in certain pertinent respects. After the trial court holds a probable cause hearing, alleged SVPs are confined at a state hospital, not jail, and begin receiving mental health treatment while they await trial. (*Welf. & Inst. Code*, § 6600.05, subd. (a); *id.*, §§ 6602, subd. (a), 6604.) Pretrial treatment of the underlying mental disorder that caused the state to seek commitment in the first place may ultimately facilitate the individual's release before trial. This observation does not, of course, minimize the oppressive nature of involuntary detention awaiting an SVP trial. But it does to some extent distinguish pretrial incarceration at a state hospital from pretrial detention at a jail, which has few rehabilitative resources.

***518 [36] Determining how heavily to weigh the prejudice resulting from pretrial custody therefore requires a sensitive inquiry into the circumstances of the case. For individuals who have never received a favorable expert evaluation, delay in holding trial will generally entail less prejudice than for individuals who have a more substantial basis for arguing they do not satisfy the criteria for SVP commitment. Where an individual makes such a showing, the amount of prejudice may increase as the length of the delay increases. For example, in the case of an individual who has expert reports recommending release, a four-year delay in going to trial will generally be significantly more prejudicial than a one-year delay.

[37] Applying these general principles to Camacho's case, the delay here had no appreciable impact on Camacho's ability to present his defense. In 2015, one out of four expert reports concluded — for the first time ever — that Camacho no longer met the criteria for commitment, and two of the other reports seemed to suggest he might qualify for conditional

release in the future. The length of delay since that point — approximately seven years — is significant, and Camacho has been involuntarily committed throughout that period. We therefore find some amount of prejudice in Camacho's case, but no indication that the delay has undermined **508 the fairness of the proceedings. Any prejudice is, moreover, extenuated by the fact that Camacho has not shown he in fact wanted a timely trial. (See ¶ *Barker, supra*, 407 U.S. at p. 534, 92 S.Ct. 2182 [“More important than the absence of serious prejudice, is the fact that Barker did not want a speedy trial”].)

E.

[38] Balancing the ¶ *Barker* factors, we conclude that Camacho fails to demonstrate a violation of his due process right to a timely trial. Only one *394 factor — the length of the delay — strongly supports Camacho's claim of a due process violation. Though the trial court and the state seemingly neglected their responsibility to bring the case to trial in a timely manner, we agree with the Court of Appeal that the defense, rather than the state, bears more responsibility for the delay. Camacho did not demonstrate a desire to go to trial before 2018, nor did he suffer significant prejudice to his case as a result of the delay. We find no violation of Camacho's due process right to a timely trial.

V.

Camacho raises an alternative due process argument: that the trial court violated his due process rights by failing to “enact any procedural safeguards to ensure that [he] consented to the repeated delays in his case” during the eight-year period when he did not personally appear. In Camacho's view, if, at any given hearing, an alleged SVP is not “present in court with the opportunity to be heard,” due process mandates that “an appropriate written waiver” of personal appearance must be filed.

[39] [40] We decline to hold that due process requires the defendant's personal presence at every hearing, regardless of the substance of the hearing. As a general rule, a criminal defendant has no due process right to be present at hearings unless “his presence has a relation, reasonably substantial, to the fulness of his opportunity to defend against the charge.” (¶ *Snyder v. Massachusetts* (1934) 291 U.S. 97,

105–106, 54 S.Ct. 330, 78 L.Ed. 674; [id.](#) at pp. 107–108, 54 S.Ct. 330 [“[T]he presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only.”].) There is no reason to ****519** believe a different rule should apply in the SVP context. To require personal presence at every hearing would, moreover, entail transportation and other logistical costs not justified by any substantial benefit. If an individual objects to delays and wishes to assert the right to a speedy or timely trial, he or she may communicate as much through counsel or communicate directly with the court; and courts may consider any difficulties in that communication when determining whether an individual's timely trial right has been violated. (See [Barker, supra](#), 407 U.S. at p. 529, 92 S.Ct. 2182.)

[41] As discussed above, Camacho fails to show that his prolonged absence from court was involuntary. Camacho does not attempt to demonstrate that his presence at any of the hearings held in his absence would have had a “reasonable, substantial relation to his opportunity to defend the charges against him.” ([People v. Butler \(2009\)](#) 46 Cal.4th 847, 861, 95 Cal.Rptr.3d 376, 209 P.3d 596.) Nor does Camacho allege, much less demonstrate, that ***395** his counsel acted against his wishes in seeking trial continuances during periods when Camacho was not personally present. Accordingly, we find no due process violation.

VI.

Although Camacho fails to establish a violation of his due process rights, the Attorney General concedes that the People and the trial court both could have done more to move the case along. We agree. It bears emphasis that an individual faced with potential SVP commitment has a due process right to trial at a reasonable time, and the People and trial court both bear responsibility for ensuring that right is respected. The trial court, in particular, has responsibility to exercise its power over trial timing in a manner that takes account of

the individual's interests and that adequately guards against unjustified delays.

****509** We have already described what this responsibility entails, including careful compliance with new statutory procedures designed to safeguard against unjustified continuances of previously set trial dates. ([Welf. & Inst. Code, § 6603, subd. \(c\).](#)) In view of the vital importance of ensuring adequate procedures are in place to protect the interests of the defendant, the state, and the public, we further call on the Judicial Council to examine the issue. As the policy and rulemaking body of the courts, the Judicial Council is in the best position to study the issue of pretrial delays in SVP cases with the input of interested persons and consider what, if any, additional safeguards would facilitate timely adjudication of petitions for commitment under the SVP Act.

Here, however, although the trial court and the People should have taken more affirmative steps to bring Camacho to trial, Camacho fails to demonstrate a violation of his due process right to a timely trial on the petition for recommitment under the SVP Act. Because the Court of Appeal reached the same conclusion, we affirm its judgment.

We Concur:

[GUERRERO, C. J.](#)

[CORRIGAN, J.](#)

[LIU, J.](#)

[GROBAN, J.](#)

[JENKINS, J.](#)

[EVANS, J.](#)

All Citations

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Footnotes

- 1 The SVP Act has been amended several times since it was first enacted in 1995. Unless otherwise indicated, statutory references are to the version of the SVP Act currently in force.
- 2 (See, e.g., [In re Kerins](#) (2023) 89 Cal.App.5th 1084, 306 Cal.Rptr.3d 553 [14-year delay], review granted June 14, 2023, S279933; [People v. Hubbs](#) (Jan. 19, 2023, D077636) [nonpub. opn.] 2023 WL 311941 [15-year delay]; [People v. Carter](#) (2022) 86 Cal.App.5th 739, 303 Cal.Rptr.3d 71 [14-year delay]; [People v. Lozano](#) (Aug. 10, 2022, C094245) [nonpub. opn.] 2022 WL 3224388 [11-year delay]; [People v. Ballardo](#) (Mar. 29, 2022, B290567) [nonpub. opn.] 2022 WL 906421 [13-year delay]; [Camacho v. Superior Court of Merced County](#) (Jan. 21, 2022, F082798) [nonpub. opn.] 2022 WL 189070 [15-year delay]; [People v. Eden](#) (Jan. 21, 2022, A162818) [nonpub. opn.] 2022 WL 188679 [5-year delay]; [People v. Tran](#) (2021) 62 Cal.App.5th 330, 276 Cal.Rptr.3d 603 [11-year delay]; [People v. Orey](#) (2021) 63 Cal.App.5th 529, 277 Cal.Rptr.3d 835 [8-year delay]; [People v. Sims](#) (Feb. 24, 2021, C088029) [nonpub. opn.] 2021 WL 717063 [9-year delay]; [People v. Taylor](#) (Jan. 28, 2021, B303044) [nonpub. opn.] 2021 WL 281796 [9-year delay]; [People v. Allen](#) (Jan. 27, 2021, B288740) [nonpub. opn.] 2021 WL 268353 [15-year delay]; [In re Butler](#) (2020) 55 Cal.App.5th 614, 269 Cal.Rptr.3d 649 [13-year delay]; [People v. DeCasas](#) (2020) 54 Cal.App.5th 785, 268 Cal.Rptr.3d 663 [13-year delay]; [People v. Bradley](#) (2020) 51 Cal.App.5th 32, 264 Cal.Rptr.3d 819 [3-year delay]; [People v. Teluci](#) (Nov. 4, 2020, A155206) [nonpub. opn.] 2020 WL 6482396 [11-year delay]; [People v. Raker](#) (Aug. 20, 2020, B299718) [nonpub. opn.] 2020 WL 4877437 [11-year delay]; [People v. Barrcena](#) (Aug. 3, 2020, B289917) [nonpub. opn.] 2020 WL 4435548 [11-year delay]; [People v. Burns](#) (May 21, 2020, B296809) [nonpub. opn.] 2020 WL 2570173 [13-year delay]; [People v. Strahan](#) (Feb. 5, 2020, B295295) [nonpub. opn.] 2020 WL 563906 [22-year delay].)
- 3 Although Camacho brings a claim under both the federal and state Constitutions, he focuses exclusively on federal authorities. While we reaffirm that we have the “power and authority to construe the state Constitution independently” ([Hubbart, supra](#), 19 Cal.4th at p. 1152, fn. 19, 81 Cal.Rptr.2d 492, 969 P.2d 584), Camacho has offered no arguments specific to the California Constitution. Our analysis, like the parties’, therefore centers on the federal Constitution.
- 4 So have other state high courts. (See [Matter of Ellison](#) (2016) 305 Kan. 519, 531–532, 535, 385 P.3d 15 [adopting [Barker](#) test to evaluate delay of 1,705 days between probable cause hearing and trial under Kansas’s SVP Act]; [Morel v. Wilkins](#) (Fla. 2012) 84 So.3d 226, 246 [applying [Barker](#) to evaluate 10-year pretrial delay under Florida’s SVP Act]; cf. [In re Commitment of Beyer](#) (2006) 287 Wis.2d 1, 25–31, 707 N.W.2d 509 [implicitly adopting [Barker](#) in evaluating due process violation for 22-month delay between filing of annual examination and probable cause hearing]; [Com. v. Blake](#) (2009) 454 Mass. 267, 279–280, 909 N.E.2d 532 (conc. opn. of Ireland, J.) [discussing relevance of [Barker](#) to evaluation of 13-month delay between bench trial for adjudication of sexual dangerousness and issuance of decision].)
- 5 It is a separate question whether [Barker](#) dictates the remedy when a violation is found. In the criminal context, [Barker](#) instructs that the sole remedy for a Sixth Amendment speedy trial violation is dismissal of the prosecution — an “unsatisfactorily severe remedy,” but, in the high court’s view, the “only possible”

one. (🚩 *Barker, supra*, 407 U.S. at p. 522, 92 S.Ct. 2182; accord, 🚩 *Williams, supra*, 58 Cal.4th at p. 233, 165 Cal.Rptr.3d 717, 315 P.3d 1.) The Courts of Appeal have generally assumed the same must be true in evaluating claims of due process violations in the SVP context. (🚩 *Vasquez, supra*, 27 Cal.App.5th at pp. 82–83, 238 Cal.Rptr.3d 14 [holding that dismissal is the only possible remedy for a timely trial violation and affirming the trial court's order of dismissal]; 🚩 *DeCasas, supra*, 54 Cal.App.5th at p. 813, 268 Cal.Rptr.3d 663 [same]; see also 🚩 *Butler, supra*, 55 Cal.App.5th at pp. 637, 664, 269 Cal.Rptr.3d 649 [affirming order of dismissal without discussing the question of appropriate remedies].)

Other courts have, however, suggested that there may be other possible remedies for unreasonable delays in this context. (🚩 *U.S. v. Timms* (4th Cir. 2012) 664 F.3d 436, 455, fn. 19 [“[E]ven if Timms’ case constituted a due process violation, the proper remedy would not be release, but to conduct the hearing and adjudicate whether he is a ‘sexually dangerous person’ under the statute.”]; see 🚩 *Orozco, supra*, 117 Cal.App.4th at p. 179, 11 Cal.Rptr.3d 573 [finding no due process violation, but noting that when trial had not occurred within a reasonable time after the probable cause hearing, the remedy was to order that trial be held “forthwith”]; cf. 🚩 *Betterman, supra*, 578 U.S. at pp. 445, 444, 136 S.Ct. 1609 [discussing remedy for unconstitutional postconviction delay in sentencing and noting that “a dismissal remedy ordinarily would not be in order” and would provide “an unjustified windfall” to the defendant].) The parties before us have not addressed the question of possible alternative remedies in this case and we have no occasion to decide it.

6 The transcript of the hearing from October 18, 2018 reflects one relevant exchange between Camacho and Davis. Davis stated, “The 🚩 *Vasquez* case has raised some issues that are certainly parallel to Mr. Camacho’s situation.” The prosecutor responded that he would not object to “resetting the trial within 60 days of today.” Davis reminded the judge that Camacho did not have any updated evaluations, and Camacho added, “[a]nd this is why I wanted to not waive any more time because they have never come to see me at any time after nine years. [¶] ... [¶] I’ve been waiting and waiting for, you know, for somebody to come and talk to me about anything. [¶] And I was looking at this 🚩 *Vasquez* case, and it kind of like — it does apply to myself. [¶] Seventeen years of not having a representative to get me ready for trial.”

We note, however, that Camacho does not assert here that he was unable to speak with Davis or an expert for nine years, or that he was unrepresented for 17 years. Both claims are, moreover, unsupported by the record the parties stipulated to here.

7 We additionally note that, as is typically true, a more complete record of proceedings may be developed by way of a petition for writ of habeas corpus. In this case, Camacho has had the opportunity to present evidence that Davis acted against his wishes in requesting trial continuances and entering time waivers on his behalf. He has not, however, presented any such evidence.

8 We disapprove the following cases to the extent they apply a presumption of prejudice when evaluating a claimed violation of the due process right to a timely SVP trial: 🚩 *People v. Tran, supra*, 62 Cal.App.5th at p. 354, 276 Cal.Rptr.3d 603; 🚩 *In re Butler, supra*, 55 Cal.App.5th at p. 662, 269 Cal.Rptr.3d 649; 🚩 *People v. Bradley, supra*, 51 Cal.App.5th at p. 41, 264 Cal.Rptr.3d 819; 🚩 *People v. DeCasas, supra*, 54 Cal.App.5th at p. 808, 268 Cal.Rptr.3d 663; 🚩 *People v. Superior Court (Vasquez), supra*, 27 Cal.App.5th at p. 74, 238 Cal.Rptr.3d 14.

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