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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re LEMANUEL C., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. LEMANUEL C., Defendant and Appellant.	A109322 (Solano County Super. Ct. No. J31469)

Welfare and Institutions Code section 1800 provides for extended detention of a ward of the California Youth Authority (CYA), by way of a civil commitment extending beyond the date of his CYA discharge. At the time of the proceedings below, the statute authorized such a commitment if the ward "would be physically dangerous to the public because of [his] mental or physical deficiency, disorder, or abnormality . . . ." The juvenile court ordered such an extended detention of defendant, Lemanuel C. Defendant contends that Welfare and Institutions Code section 1800 is unconstitutional, that there was insufficient evidence to support the extended detention, and that other errors infected the proceedings.

* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of parts II.-B, II.-C, and II.-D of the discussion.

We disagree with defendant's various contentions and affirm. In the published portion of this opinion, we hold that Welfare and Institutions Code section 1800 does not violate due process under the leading cases defining the findings necessary for constitutionally valid civil commitments.

I. PROCEDURAL BACKGROUND & FACTS

We must set forth in some detail the procedural background of this case. With regard to factual determinations of the juvenile court from the evidence before it, we adhere to the applicable standards of appellate review. We must view the facts in the light most favorable to the juvenile court's determinations, and presume in support of those determinations the existence of every fact which the juvenile court could reasonably find from the evidence. (See *People v. Barnes* (1986) 42 Cal.3d 284, 303 (*Barnes*); *People v. Neufer* (1994) 30 Cal.App.4th 244, 247 (*Neufer*).)

A. Procedural Background

In April of 1999, the juvenile court sustained an allegation that defendant, then 14, committed sodomy on a person under 18, a felony (Pen. Code, § 286, subd. (b)(1)). Defendant admitted that he had sodomized his seven-year-old cousin.

In March of 2001, the court sustained an allegation that defendant made a false crime report, a misdemeanor (Pen. Code, § 148.5, subd. (a)). In April of 2001, after defendant committed a probation violation, the court committed him to CYA for a maximum term of three years two months. We affirmed the CYA commitment. (*In re Lemanuel C.* (Nov. 13, 2001, A094809) [nonpub. opn.].)

On March 1, 2002, the People filed an amended petition for extended detention of a dangerous person, pursuant to Welfare and Institutions Code section 1800.[1] Using the language of the statute as it then read, the petition alleged that defendant, if discharged from CYA, "would be physically dangerous to the public because of [his] mental . . .

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

deficiency, disorder, or abnormality . . . ."[2] The petition was supported by a letter from the Youthful Offender Parole Board, which indicated that defendant had been diagnosed with several mental disorders and was "clearly behaviorally disturbed."

On April 9, 2002, the juvenile court found probable cause to extend defendant's detention (§ 1801), and set the matter for jury trial on the petition (§ 1801.5). On September 6, 2002, a jury sustained the allegations of the section 1800 petition. The juvenile court imposed an extended civil commitment of two years.

We affirmed the commitment extension. (*In re Lemanuel C.* (June 24, 2003, A100245) [nonpub. opn.] ("A100245").) We noted that defendant's family background was dysfunctional and included "physical abuse, violence, sexual abuse, mental illness, incarceration and drug addiction." (A100245, *supra*, at p. 1.) We further noted that defendant had been sexually molested by family members when he was eight years old, and had himself engaged in sexually inappropriate behavior from an early age. (A100245, *supra*, at p. 3.) Defendant had been diagnosed with "reactive attachment disorder, mixed receptive language disorder," and "conduct disorder involving violence towards others, fire setting and other anti-social behaviors." (A100245, *supra*, at p. 4.)

On May 21, 2004, the People filed another section 1800 petition to further extend the civil commitment. Again, using the language of the statute, the petition alleged that defendant, if discharged from CYA, "would be physically dangerous to the public because of [his] mental . . . deficiency, disorder, or abnormality . . . ."

The new section 1800 petition was supported by a letter from the Director of CYA, setting forth the numerous diagnoses of defendant made by an examining psychiatrist, Dr. P. Herbert Leiderman. The diagnoses included "Reactive Attachment Disorder of Early Childhood/Adulthood," conduct disorder, and pedophilia. The director recommended an additional two-year extension "to allow [defendant] time to complete the necessary psychiatric treatment . . . ."

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[2] Physical deficiencies, disorders, or abnormalities are not at issue in this case.

On May 27, 2004, the juvenile court appointed Deputy Public Defender Pamela Boskin to represent defendant.[3] A probable cause hearing on the petition was set for June 7. On that date, the hearing was continued to June 23 at Boskin's request. Boskin had just met defendant and needed more documents, and thus was not fully prepared.[4]

On June 23 the probable cause hearing was continued to July 14. On that date, the hearing was continued to July 23, again at Boskin's request.

On July 23, Dr. Leiderman failed to appear for the probable cause hearing. The court dismissed the section 1800 petition without prejudice to refiling.

The People refiled the section 1800 petition on August 12. The petition made the same allegations as its predecessor and was supported by the same CYA letter.

On August 27, Boskin filed a motion to dismiss the refiled petition, arguing that defendant's due process rights were violated by the "extended delay" in initiating the section 1800 proceedings.

On August 30, the juvenile court held a probable cause hearing on the new petition. At the outset of that hearing, the court agreed to postpone ruling on the motion to dismiss to give the People time to file opposition.

Dr. Leiderman testified at the probable cause hearing. The juvenile court found probable cause that if defendant was discharged from CYA "he would be physically dangerous to the public because of a . . . mental disorder, multiple disorders or abnormality within the meaning of . . . section 1800." The court continued the matter to September 3 for trial setting.

The People filed an opposition to the motion to dismiss on August 31. On September 3, the juvenile court heard argument on the motion and set a trial date of September 7.

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[3] Subsequent dates are in 2004 unless otherwise indicated.

[4] Boskin requested a continuance after the court denied her request to dismiss the petition.

On September 7, the court denied the motion to dismiss, ruling that "there have been sufficient grounds" for the delay—although stating that "this is . . . a relatively close question." The court continued the matter to September 22 for a readiness conference. On that date the court set trial for December 9.

On December 9 the court continued trial to January 13, 2005.[5]

On January 11, defendant filed a motion to dismiss the refiled petition. Relying on *Kansas v. Hendricks* (1997) 521 U.S. 346 (*Hendricks*) and *Kansas v. Crane* (2002) 534 U.S. 407 (*Crane*), defendant argued that section 1800 violated due process because it did not require proof that a committed person's mental disorder causes "a lack of control which renders a person a physical danger to others." Defendant also argued the statute violated equal protection because it made it easier to civilly commit a juvenile offender than an adult offender committed as a sexually violent predator (SVP) or a mentally disordered offender (MDO).

The People opposed the motion to dismiss. The matter went to trial before the court ruled on the motion.

B. The Trial on the Section 1800 Petition

On January 13, defendant waived his right to a jury trial on the petition. The matter was tried to the court, with the testimony of CYA psychologist Dr. Marcia Asgarian and with a stipulation that the court could rely on the transcript of Dr. Leiderman's testimony from the probable cause hearing.

Dr. Asgarian worked with defendant in a CYA group home from the late fall of 2002 until May 2004. The program was designed to help the rehabilitation of sex offenders; its primary emphasis was on group psychotherapy. Defendant was initially motivated and participated in therapy for eight months. He discussed his original sodomy offense and his seven-year-old victim with Dr. Asgarian.

But after eight months defendant stopped participating, and "would shut down" in group counseling or not come to the sessions at all. In November 2003, defendant

[5] Subsequent dates are in 2005 unless otherwise indicated.

confronted another group member about that member's lack of treatment, and told the member that he—defendant—"would reoffend if he didn't receive appropriate treatment."

Dr. Asgarian opined that during the treatment period from the late fall of 2002 to May 2004, defendant did not make significant progress in his treatment. "He started off good, but then he deteriorated and refused to participate. He made several derogatory comments about being in [CYA], and not wanting to be there."[6]

Dr. Leiderman was a professor of psychiatry at Stanford Medical School with an M.D. from Harvard. He had done consulting work for CYA for 26 years. He had conducted 20 to 30 evaluations under section 1800. He conducted such an evaluation of defendant in January 2004. Defendant did not consider himself a sex offender. He had a documented history of inappropriate sexual activity, but incorrectly regarded most of it as consensual.

Dr. Leiderman concluded that defendant suffered from reactive attachment disorder, "meaning he has difficulty in forming social relationships and sees individuals as objects rather than as sentient human beings."[7] Dr. Leiderman agreed that because of this mental disorder, defendant would be unable to control his behavior without treatment and thus be a danger to the community.

On cross-examination, Dr. Leiderman testified that defendant also suffered from pedophilia, and was "attracted to individuals who are mentally weaker, less able to defend themselves than himself, and he's especially attracted to that because he's more

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[6] On cross-examination, Dr. Asgarian admitted she had no personal knowledge of defendant's participation in the program between February and May 2004, because she was on medical leave.

[7] The parties agree the mental disorder is "reactive attachment disorder," although Dr. Leiderman occasionally refers to it in his testimony as "reactive detachment disorder."

comfortable." Dr. Leiderman believed defendant was "an adventitious predator in many ways." The doctor also believed defendant suffered from a conduct disorder.[8]

At the conclusion of trial, the court continued the matter to January 18 for closing arguments and a ruling on the motion to dismiss.

On January 18, the juvenile court denied the motion to dismiss. Indicating its familiarity with *Hendricks* and *Crane*, the court found section 1800 constitutional.

The court then granted the petition: "I do find beyond a reasonable doubt that [defendant] will be a physical danger to the public by virtue of a mental deficiency[,] disorder[, or] abnormality, and although I don't believe the statute requires it, I would also find beyond a reasonable doubt that [defendant] has a serious difficulty in controlling his behavior within the meaning of . . . *Crane* . . . ."

The court imposed an extended civil commitment for an additional two years.

II. DISCUSSION

Defendant contends that section 1800 is unconstitutional because it violates his right to due process of law. He makes two other constitutional challenges to the statute: he argues that it violates equal protection, and that it is impermissibly penal rather than civil. He then contends the evidence is insufficient. Finally, he argues that three other errors infected the proceedings.

A. Due Process

Defendant correctly observes that at the time of the proceedings below, an extended detention under section 1800 required only a finding that, as the text of the statute sets forth, a person "would be physically dangerous to the public because of [his]

[8] Dr. Leiderman also said defendant suffered from obsessive compulsive disorder—but the juvenile court did not consider that disorder because it was added to Dr. Leiderman's report at the last minute, with no notice to counsel.

mental . . . deficiency, disorder, or abnormality . . . ."[9] We will call this finding, mental disorder + dangerousness, "Finding (1)."

Defendant argues the statute violates due process because it must explicitly require two additional findings: what we will call "Finding (2)," that the mental deficiency, disorder, or abnormality causes the person to have serious difficulty in controlling his dangerous behavior; and what we will call "Finding (3)," that this inability to control behavior results in a serious and well-founded risk that the person will reoffend.

We disagree. Due process requires Finding (1) and Finding (2), but not Finding (3). Finding (1) is set forth in the text of the statute and was made in this case. Finding (2) has been read into section 1800 by our Supreme Court (*In re Howard N.* (2005) 35 Cal.4th 117, 135 (*Howard N.*)) and that finding was made by the court below. Finding (3) is not a separate finding at all, but is subsumed under, or is an alternative way of expressing, the finding of dangerousness. Finding (3) defines or elaborates on the meaning of dangerousness to the public, but is not a separate element that must be found. That finding is necessarily included in Finding (1), a mental disorder resulting in physical dangerousness. Thus, the juvenile court made the necessary two findings. Accordingly, we see no due process violation.

In *Howard N.*, the Supreme Court reviewed a Court of Appeal ruling that Finding (1), mental disorder + dangerousness, was insufficient to support a civil commitment—and thus section 1800, that on its face required only Finding (1), violated due process. (*Howard N., supra,* 35 Cal.4th at pp. 122, 125.) The issue in *Howard N.* was whether section 1800 was unconstitutional because it did not expressly require Finding (2), i.e., whether the person's mental disorder "causes serious difficulty in controlling his dangerous behavior." (*Howard N., supra,* at p. 131.)

To resolve this issue, the Supreme Court analyzed the two seminal decisions of the United States Supreme Court involving civil commitments of SVP's—*Hendricks* and

[9] More specifically, such a finding was required at the probable cause hearing (§ 1801), and at the trial on the petition (§ 1801.5).

Crane. It also analyzed two of its own decisions under the California SVP law (§ 6600 et seq.) in which the California Supreme Court had applied and interpreted *Hendricks* and *Crane—Hubbart v. Superior Court* (1999) 19 Cal.4th 1138 (*Hubbart*) and *People v. Williams* (2003) 31 Cal.4th 757 (*Williams*). It is settled that "[the] constitutional principles [of these state and federal SVP cases] apply equally to all civil commitment schemes, including section 1800 . . . . [Citation.]." (*In re Michael H.* (2005) 128 Cal.App.4th 1074, 1089 (*Michael H.*); see *Howard N., supra*, 35 Cal.4th at pp. 128-132.)

Hendricks, decided in 1997, established that due process requires more than a "finding of dangerousness, standing alone . . ." for an involuntary civil commitment. (*Hendricks, supra,* 521 U.S. at p. 358.) The court noted that it had "sustained civil commitment statutes when they have coupled proof of dangerousness with the proof of some additional factor, such as 'mental illness' or 'mental abnormality.' [Citations.]" (*Ibid.*)

Hendricks upheld the Kansas SVP law because it required a showing of not only dangerousness, but also of a mental disorder linked to a difficulty of controlling dangerous behavior. (*Hendricks, supra,* 521 U.S. at pp. 358, 360; see *Howard N., supra,* 35 Cal.4th at pp. 128-129.) The civil commitment law thus satisfied due process because Hendricks's "admitted lack of volitional control, coupled with a prediction of future dangerousness, adequately distinguishes Hendricks from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings." (*Hendricks, supra,* 521 U.S. at p. 360.)

In *Hubbart*, decided in 1999, the California Supreme Court upheld the California SVP law. That law allows for a civil commitment of a sex offender "if certain conditions are met, including that the person has a 'diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.' (§ 6600, subd. (a)(1).) A ' "[d]iagnosed mental disorder" includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree

constituting the person a menace to the health and safety of others.' (§ 6600, subd. (c).)" (*Howard N., supra,* 35 Cal.4th at p. 127.)[10]

Hubbart relied on *Hendricks* to uphold the law against a due process challenge. The court reasoned that the California SVP law required a finding of a mental disorder resulting in dangerousness—i.e., Finding (1)—and that the SVP law linked that finding to a finding that the mental disorder caused "the inability to control dangerous sexual behavior"—i.e., Finding (2). (*Hubbart, supra,* 19 Cal.4th at p. 1158; see *Howard N., supra,* 35 Cal.4th at p. 130.) The California SVP law "establishes the requisite connection between impaired volitional control and the danger posed to the public." (*Hubbart, supra,* at p. 1158.)

In *Crane,* decided in 2002, the United States Supreme Court revisited the Kansas SVP law and held that due process does not require a *total* lack of volitional control: "It is enough to say that there must be proof of serious difficulty in controlling behavior." (*Crane, supra,* 534 U.S. at p. 413.) This difficulty of volitional control, "when viewed in light of such features of the case as the nature of the psychiatric diagnosis, and the severity of the mental abnormality itself, must be sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case. [Citations.]" (*Ibid.*)

In *Williams*, decided in 2003, the California Supreme Court interpreted *Crane* as, in essence, requiring both Finding (1) and Finding (2): "In . . . *Crane* . . . the United States Supreme Court held that the safeguards of personal liberty embodied in the due process guaranty of the federal Constitution prohibit the involuntary confinement of persons on the basis that they are *dangerously disordered* without 'proof [that they have] *serious difficulty in controlling [their dangerous] behavior*.' [Citation.]" (*Williams,*

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[10] At the time *Hubbart* was decided, the quoted language of section 6600, subdivision (a)(1) was designated section 6600, subdivision (a). (See Historical and Statutory Notes, 73D West's Ann. Welf. & Inst. Code (2006 pocket pt.) foll. § 6600, pp. 64-65.)

supra, 31 Cal.4th at p. 759, italics added; see *id.* at pp. 770-771; *Howard N., supra,* 35 Cal.4th at pp. 131-133.) The two italicized phrases constitute Finding (1) and Finding (2), respectively. Elsewhere, *Williams* noted that under *Hendricks* and *Crane* "a constitutional civil commitment scheme must link future dangerousness to a mental abnormality that impairs behavioral control . . . ." (*Williams, supra,* at p. 773.)

Howard N. reviewed the four cases just discussed, and concluded that Finding (2), a finding of serious difficulty in controlling dangerous behavior, had to be made in a proceeding under section 1800. The court interpreted section 1800 to require that finding in order to preserve the statute's constitutionality. (*Howard N., supra,* 35 Cal.4th at pp. 131-135.) The court further held that the Finding (2) language "must be alleged in the petition for extended commitment (§ 1800), and demonstrated at the probable cause hearing (§ 1801) and any ensuing trial (§ 1801.5)." (*Howard N., supra,* at p. 135.)[11]

Defendant complains that Finding (2) was not alleged in the petition, and there was no Finding (2) made at the probable cause hearing.

This case was tried before *Howard N.* was decided. Thus, the section 1800 petition in this case did not allege the Finding (2) language. But defendant was not prejudiced by that failure for the following reasons. In his January 11, 2005 motion to dismiss, defendant raised the issue of whether due process required that the court must find that he had a serious difficulty in controlling his dangerous behavior. After trial, the court made an explicit finding—beyond a reasonable doubt—that defendant "has a serious difficulty in controlling his behavior within the meaning of . . . *Crane*, . . ." Thus

[11] In an obvious response to *Howard N., supra,* 35 Cal.4th at pages 131-135 the Legislature amended the three statutes (effective July 21, 2005) to include the Finding (2) language. (Stats. 2005, ch. 110, §§ 1, 3, 4.) Section 1800 was amended to add "which causes the person to have serious difficulty controlling his or her dangerous behavior" as a further clarification of the type of mental deficiency, disorder, or abnormality.

the failure to allege the Finding (2) language in the petition could not possibly have prejudiced defendant.[12]

We turn now to Finding (3), a finding that the inability to control behavior results in a serious and well-founded risk that the person will reoffend. *Hendricks* and *Crane* do not speak of "a serious and well-founded risk that the person will reoffend." That phraseology comes from California Supreme Court decisions interpreting California's SVP law.

As we noted above, one of the key conditions for an SVP determination is that a person "has a diagnosed mental disorder that makes the person a danger to the health and safety of others *in that it is likely that he or she will engage in sexually violent criminal behavior*." (§ 6600, subd. (a)(1), italics added.) The phrase beginning with "in that it is likely" modifies the clause, "that makes the person a danger to the health and safety of others." Thus a person is a danger "in that it is likely" they would reoffend. In other words, the likelihood of reoffending is the very crux of the person's dangerousness to the public.

The California Supreme Court has devoted considerable thought to the definition of the adverb "likely" in the SVP law. In *People v. Superior Court (Ghilotti)* (2002) 27 Cal.4th 888 (*Ghilotti*), the court interpreted section 6601, subdivision (d), which governs the initiation of SVP proceedings. That statute requires the evaluation of the potential SVP by mental health professionals. An SVP petition cannot be filed unless the evaluators conclude the defendant "has a diagnosed mental disorder so that he or she is *likely to engage in acts of sexual violence* without appropriate treatment and custody." (Italics added.)

The *Ghilotti* court engaged in a semantic analysis of the meaning of "likely" in this statute, and concluded the term did not mean "more likely than not"—i.e., the term

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[12] True, the juvenile court did not make a Finding (2) determination at the probable cause hearing. But that failure was cured by the finding after trial beyond a reasonable doubt, for the reasons we explained in *People v. Hayes* (2006) 137 Cal.App.4th 34, 49-51.

did not require a prediction of a greater than 50 percent chance of reoffending. (*Ghilotti, supra,* 27 Cal.4th at pp. 915-919.) Rather, the court ruled that "an evaluator . . . must conclude that the person is 'likely' to reoffend if, because of a current mental disorder which makes it difficult or impossible to restrain violent sexual behavior, the person presents a *substantial danger*, that is, a *serious and well-founded risk*, that he or she will commit such crimes if free in the community." (*Id.* at p. 922, italics in original.)

Nothing in *Ghilotti* suggests that the "serious and well-founded risk" language is anything other than an alternative way of referring to, or defining, the constitutional requirement of dangerousness. Citing *Hubbart* and *Hendricks*, the court noted that California's SVP law "consistently emphasizes the themes common to valid civil commitment statutes, i.e., a current *mental condition or disorder* that makes it difficult or impossible to control volitional behavior and *predisposes* the person to inflict harm on himself or others, thus producing *dangerousness* measured by a high risk or threat of further injurious acts if the person is not confined. [Citations.]" (*Ghilotti, supra,* 27 Cal.4th at p. 920, italics in original.) This is nothing more or less than a restatement of Finding (1) and Finding (2).

Elsewhere, *Ghilotti* states that Finding (1) and Finding (2) satisfy the demands of due process. "In our view, the state has a compelling protective interest in the confinement and treatment of persons who have already been convicted of violent sex offenses, and who, as the result of current mental disorders that make it difficult or impossible to control their violent sexual impulses, represent a *substantial danger* of committing similar new crimes [citations], even if that risk cannot be assessed at greater than 50 percent. The [SVP law] is narrowly tailored to achieve this compelling purpose. [Citation.]" (*Ghilotti, supra,* 27 Cal.4th at p. 924, italics in original.)

In *Cooley v. Superior Court* (2002) 29 Cal.4th 228 (*Cooley*), the court construed section 6602, subdivision (a), which governs an SVP probable cause hearing. The statute requires a finding of probable cause that the person named in the SVP petition "is *likely* to engage in sexually violent predatory criminal behavior upon . . . release." (§ 6602, subd. (a), italics added.) Relying on *Ghilotti*, the court construed "likely" to mean that

the potential SVP poses a "*serious and well-founded risk*" of reoffending. (*Cooley, supra,* 29 Cal.4th at p. 256, italics in original.)

And in *People v. Roberge* (2003) 29 Cal.4th 979 (*Roberge*), the court construed the language directly at issue here: whether a person "has a diagnosed mental disorder that makes the person a danger to the health and safety of others *in that it is likely that he or she will engage in sexually violent criminal behavior*." (§ 6600, subd. (a)(1), italics added.) Following *Cooley* and *Ghilotti*, the court again construed "likely" as presenting "a *substantial danger,* that is, a *serious and well-founded risk,*" of reoffending. (*Roberge, supra,* 29 Cal.4th at p. 988, italics in original.)

None of these three cases compels the conclusion that an explicit, separate Finding (3) is constitutionally necessary to a civil commitment. Rather, the serious and well-founded risk of reoffending is simply another way of speaking of the necessary finding of dangerousness, which is a component of Finding (1). We thus reject defendant's contention that Finding (3) had to have been alleged in the petition and found by the juvenile court.

We are aware that *Michael H., supra,* 128 Cal.App.4th 1074, on which defendant relies, reached the opposite conclusion and holds that a constitutional commitment under section 1800 explicitly requires Finding (3). (*Michael H., supra,* at pp. 1080, 1091.) We respectfully disagree with *Michael H.* We simply do not see any basis for gleaning from the authorities discussed above any separate requirement for Finding (3). Due process is satisfied if the trier of fact in a section 1800 proceeding finds that the defendant would be physically dangerous to the public because of a mental disorder that resulted in a serious difficulty in controlling his dangerous behavior. A serious and well-founded risk of reoffending is simply another way of describing a person as "physically dangerous to the public" under section 1800, and need not be made in a separate, third finding.[13] The trier

[13] We note that the SVP jury instruction does not require a separate Finding (3). CALCRIM No. 3454 (Jan. 2006 ed.) requires the court or jury to find, as here pertinent, that the defendant has a diagnosed mental disorder and as a result is likely to be a danger to others because he will engage in sexually violent predatory criminal behavior. The

of fact is assisted by an explanation of what is meant by one being physically dangerous to the public, that is, how likely to reoffend, but that elaboration is not a necessary element for commitment nor is it constitutionally required.

Moreover, even under the rationale of *Michael H.*, *supra*, 128 Cal.App.4th 1074, the testimony of the experts was unequivocal and believable that Lemanuel C. has a likelihood or serious and well-founded risk of reoffense because of his mental disorder or abnormality—the court found beyond a reasonable doubt that he in fact would be a physical danger to the public by virtue of multiple mental disorders or abnormalities. Implicit in the finding is the concept of a well-founded risk to the public based on expert testimony, the present condition of Lemanuel C., and his past behavior.

B. Other Constitutional Challenges to Section 1800

Equal Protection. As he argued in his January 11, 2005 motion to dismiss, defendant contends section 1800 violates equal protection because it has fewer procedural safeguards than those required to civilly commit an adult SVP or MDO. We need not discuss the procedures under the SVP law in any more detail, or set forth the MDO commitment procedures. We agree that the adult statutes generally have more procedural safeguards and require more serious predicate offenses for commitment. But there is no equal protection violation here because persons committed under section 1800 are not similarly situated to SVP's and MDO's in key respects.

The initial inquiry in an equal protection analysis is whether persons are similarly situated for purposes of the challenged law. (*Cooley*, *supra*, 29 Cal.4th at p. 253.) It is true that CYA wards committed under section 1800 and adults committed as SVP's or MDO's are similarly situated in that they are dangerous due to mental disorders and are thus subject to commitment for treatment and to protect the public. But this does not lead

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instruction *defines* the "likely to engage in sexually violent predatory criminal behavior" in terms of a serious and well-founded risk of such behavior—but does not require the jury or fact-finder judge to explicitly make a "serious and well-founded risk" finding. CALJIC No. 4.19 (7th ed. 2003) is similar and does not set forth a separate element as *Michael H.*, *supra*, 128 Cal.App.4th 1074 suggests. The explanation of the terms does not make the concept another element that must be alleged and proved.

to the conclusion that "persons committed under California's various civil commitment statutes are similarly situated in all respects. They are not." (*People v. Buffington* (1999) 74 Cal.App.4th 1149, 1158 (*Buffington*).)

CYA wards are distinctly different from more serious adult offenders who have committed violent or sexually violent crimes. "[The Legislature] 'is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest.' [Citation.]" (*Buffington, supra,* 74 Cal.App.4th at p. 1158.) The Legislature may also ". . . 'adopt more than one procedure for isolating, treating, and restraining dangerous persons; and differences will be upheld if justified.' [Citation.]" (*Ibid.*) The mere fact that the Legislature has made it more difficult to commit a more serious, adult offender—especially one who faces the stigma of being declared an SVP—does not give rise to an equal protection violation.[14]

Alleged Penal Effect of Section 1800. Defendant argues that section 1800 is not civil but impermissibly punitive. He claims this is so because of two claims we have rejected above—fewer procedural safeguards than adults and supposed harsher treatment—but also because section 1800 "does not require mental health treatment . . . ."

Defendant admits he did not raise this argument below. In any case, it lacks merit. Commitment proceedings under section 1800 are not penal, but are special proceedings of a civil nature. (*In re Gary W.* (1971) 5 Cal.3d 296, 309.) And when a CYA ward is committed under section 1800, he remains in CYA "control . . . subject to the provisions of this chapter . . . ." (§ 1802.) That would be Welfare and Institutions Code, division 2.5, chapter 1, entitled "The Youth Authority," which includes section 1700—which mandates treatment of CYA wards.

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[14] Defendant also contends there is an equal protection violation due to harsher treatment of CYA wards. He notes that unlike SVP's or MDO's, a ward over 21 years old can be transferred to the Department of Corrections. (§ 1802.) On this record, this is a hypothetical argument and will not be considered. (See *People v. Hsu* (2000) 82 Cal.App.4th 976, 982.)

C. Sufficiency of the Evidence

We repeat what we said at the outset of this opinion. With regard to factual determinations of the juvenile court from the evidence before it, we must adhere to the applicable standards of appellate review. We must view the facts in the light most favorable to the juvenile court's determinations, and presume in support of those determinations the existence of every fact which the juvenile court could reasonably find from the evidence. (See *Barnes, supra,* 42 Cal.3d at p. 303; *Neufer, supra,* 30 Cal.App.4th at p. 247.)

Defendant contends the evidence is insufficient to support the commitment. He does so in a 40-page hyperdetailed discourse of the evidence presented below.

Our task begins and ends with determining whether there is substantial evidence to support the commitment order. Our sole function is to consider the evidence in the light most favorable to the judgment, presume in support of the judgment every fact that can be reasonably deduced from the evidence, and "determine . . . whether a reasonable trier of fact could have found that the prosecution sustained its burden of proof beyond a reasonable doubt." (*People* v. *Mincey* (1992) 2 Cal.4th 408, 432; see *People* v. *Jones* (1990) 51 Cal.3d 294, 314.) The evidence must be "reasonable, credible, and of solid value." (*People* v. *Johnson* (1980) 26 Cal.3d 557, 578.)

We decline to address defendant's compendium of evidentiary arguments point-by-point. We have set forth the evidence above, and it is clearly sufficient to support the commitment order. There is substantial evidence, based on the opinions of two psychiatric experts, that defendant suffers from mental disorders which make him dangerous to the public because of his serious difficulty in controlling his dangerous behavior.

We do note that defendant argues at some length that reactive attachment disorder is not a valid diagnosis for an adult because it does not exist in the current DSM-IV.[15]

[15] In so doing, defendant relies on numerous matters outside the record which we hereby strike from the briefs on our own motion.

But Dr. Leiderman, a Harvard-trained Stanford professor of psychiatry, testified that it is now recognized as an accepted diagnosis—and he believed it was to be included in the forthcoming DSM-V. We accept the doctor's largely uncontroverted testimony.

D. Miscellaneous Issues

1. Defendant complains that Dr. Leiderman provided hearsay testimony at the probable cause hearing in reaching his conclusion that defendant was a pedophile. But the hearsay complained of in defendant's citations to the record, police reports and other documents and evidence of past crimes, *was brought out by defendant's trial counsel on cross-examination*. In any case, Dr. Leiderman's conclusion that defendant suffered from pedophilia is not necessary to uphold the commitment order: there is substantial evidence that defendant suffered from other mental disorders, particularly reactive attachment disorder.

2. Defendant contends he was denied due process by the delay in the section 1800 proceedings. The statute requires that the commitment petition "shall be filed at least 90 days before the date of discharge." But that 90-day time limit is directory, not mandatory and jurisdictional, and the court must balance the justification for the delay against any prejudicial effect. (*People v. Hernandez* (1983) 148 Cal.App.3d 560, 563-564; see *People v. Kirkland* (1994) 24 Cal.App.4th 891, 910 [this general rule typically applies in various types of civil commitment proceedings].)

Defendant's prior commitment was due to expire September 6, 2004. The initial section 1800 petition was filed May 21, 2004, well in advance of 90 days prior to discharge on the prior commitment. Counsel for defendant—Ms. Boskin—was appointed almost immediately. The probable cause hearing was continued three times, twice at Boskin's request. The petition was dismissed July 23, 2004, because Dr. Leiderman failed to appear. The petition, identical to its predecessor, was refiled August 12, 2004, about three weeks before defendant's discharge date. After various continuances the trial was held January 13, 2005.

As noted, defendant moved to dismiss the petition arguing he was prejudiced by the delay. The juvenile court denied the motion to dismiss, ruling that "there have been

sufficient grounds" for the delay—although stating that "this is . . . a relatively close question." The court's finding of sufficient grounds was correct, especially given that Boskin was responsible for some of the delay. And we cannot see how defendant was prejudiced. He was represented by counsel throughout. Boskin was able to mount a vigorous and detailed cross-examination of Dr. Leiderman at the probable cause hearing, consuming almost 65 pages of reporter's transcript. Boskin was thoroughly familiar with the details of defendant's case. Boskin had more than adequate time to prepare defendant's defense and indeed adequately represented defendant.

3. Finally, defendant contends that his due process rights were violated by an alleged problem with late or incomplete discovery. Defendant casts this argument in the form of a *Brady* violation (*Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*)), claiming the People failed to disclose certain CYA records reviewed by Dr. Leiderman and other documents. Defendant argues this material, which he could have described with more particularity, could have been used to impeach Drs. Leiderman and Asgarian.

But *Brady* error only occurs when there is a reasonable probability that the undisclosed evidence would have produced a different result in the proceedings, or, in other words, undermines confidence in the trial. (See *Stickler v. Greene* (1999) 527 U.S. 263, 281; *United States v. Bagley* (1985) 473 U.S. 667, 678; *In re Brown* (1998) 17 Cal.4th 873, 884.) We simply do not see that situation here. Defendant had a vigorous and informed defense. The testimony of the two doctors was straightforward, and defendant has not shown any credible grounds for any successful impeachment.

III. DISPOSITION

The order granting the section 1800 petition is affirmed.

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Marchiano, P.J.

We concur:

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Stein, J.

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Swager, J.

Trial Court: Solano County Superior Court

Trial Judge: Honorable R. Michael Smith

Attorneys:

Patricia N. Cooney
By appointment of the Court for First District Appellant Project
Attorney for Defendant and Appellant - Lemanuel C., minor.

Bill Lockyer, Attorney General of the State of California
Robert R. Anderson, Chief Assistant Attorney General
Gerald A. Engler, Senior Assistant Attorney General
Martin S. Kaye, Supervising Deputy Attorney General
Michael E. Banister, Deputy Attorney General
Attorneys for Plaintiff and Respondent – The People of the State of California