SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	AB 1906	**Hearing Date:**	May 10, 2016
Author:	Melendez		
Version:	February 11, 2016		
Urgency:	No	**Fiscal:**	No
Consultant:	JM		

Subject: ***Mental Health: Sexually Violent Predators***

HISTORY

Source: California District Attorneys Association

Prior Legislation: SB 507 (Pavley) – Ch. 576, Stats. 2015
AB 1607 (Fox) – Ch. 877, Stats. 2014
SB 295 (Emmerson) – Ch. 182, Stats. 2013
SB 760 (Alquist) – Ch. 790, Stats. 2012
Proposition 83, November 2006 General Election
SB 1128 (Alquist) – Ch. 337, Stats. 2006
AB 893 (Horton) – Ch. 162, Stats. 2005
AB 2450 (Canciamilla) – Ch. 425, Stats. 2004
AB 493 (Salinas) – Ch. 222, Stats. 2004
SB 659 (Correa) – Ch. 248, Stats. 2001
AB 1142 (Runner) – Ch. 323, Stats. 2001
SB 2018 (Schiff) – Ch. 420, Stats. 2000
SB 451 (Schiff) – Ch. 41, Stats. 2000
AB 2849 (Havice) – Ch. 643, Stats. 2000
SB 746 (Schiff) – Ch. 995, Stats. 1999
SB 11 (Schiff) – Ch. 136, Stats. 1999
SB 1976 (Mountjoy) – Ch. 961, Stats. 1998
AB 888 (Rogan) – Ch. 763, Stats. 1995
SB 1143 (Mountjoy) - Ch. 764, Stats. 1995
AB 888 (Rogan) – Ch. 763, Stats. of 1995
SB 1143 (Mountjoy) – Ch. 764, Stats. of 1995

Support: California State Sheriffs' Association

Opposition: None known

Assembly Floor Vote: 74 - 0

PURPOSE

The purpose of this bill is to require the Department of State Hospitals (DSH) to request that a district attorney file a petition for commitment of a person as a sexually violent predator (SVP) within 20 days of the determination by DSH that the person meets the criteria for commitment as an SVP.

Current law provides for the civil commitment for psychiatric and psychological treatment of a prison inmate found to be a SVP after the person has served his or her prison commitment. (Welf. & Inst. Code, § 6600, et seq.)

Current law defines a "sexually violent predator" as "a person who has been convicted of a sexually violent offense against at least one victim, 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).)

Current law permits a person committed as a SVP to be held for an indeterminate term upon commitment. (Welf. & Inst. Code, § 6604.1.)

Current law requires that a person found to have been a SVP and committed to the Department of State Hospitals (DSH) have a current examination on his or her mental condition made at least yearly. The report shall include consideration of conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and also what conditions can be imposed to adequately protect the community. (Welf. & Inst. Code, § 6604.9.)

Current law allows a SVP to seek conditional release with the authorization of the DSH Director when DSH determines that the person's condition has so changed that he or she no longer meets the SVP criteria, or when conditional release is in the person's best interest and conditions to adequately protect the public can be imposed. (Welf. & Inst. Code, § 6607.)

Current law allows a person committed as a SVP to petition for conditional release or an unconditional discharge any time after one year of commitment, notwithstanding the lack of recommendation or concurrence by the Director of DSH. (Welf. & Inst. Code, § 6608, subd. (a).)

Current law provides that, if the court deems the conditional release petition not frivolous, the court is to give notice of the hearing date to the attorney designated to represent the county of commitment, the retained or appointed attorney for the committed person, and the Director of State Hospitals at least 30 court days before the hearing date. (Welf. & Inst. Code, § 6608, subd. (b).)

Current law requires the court to first obtain the written recommendation of the director of the treatment facility before taking any action on the petition for conditional release if the is made without the consent of the director of the treatment facility. (Welf. & Inst. Code, § 6608, subd. (c).)

Current law provides that the court shall hold a hearing to determine whether the person committed would be 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 due to his or her diagnosed mental disorder if under supervision and treatment in the community. Current law further provides that the attorney

designated the county of commitment shall represent the state and have the committed person evaluated by experts chosen by the state and that the committed person shall have the right to the appointment of experts, if he or she so requests. (Welf. & Inst. Code, § 6608, subd. (e).)

Current law requires the court to order the committed person placed with an appropriate forensic conditional release program operated by the state for one year if the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community. Current law further requires a substantial portion of the state-operated forensic conditional release program to include outpatient supervision and treatment. Provides that the court retains jurisdiction of the person throughout the course of the program. (Welf. & Inst. Code, § 6608, subd. (e).)

Current law provides that if the court denies the petition to place the person in an appropriate forensic conditional release program, the person may not file a new application until one year has elapsed from the date of the denial. (Welf. & Inst. Code, § 6608, subd. (h)

Current law allows, after a minimum of one year on conditional release, the committed person, with or without the recommendation or concurrence of the Director of State Hospitals, to petition the court for unconditional discharge, as specified. (Welf. & Inst. Code, § 6608, subd. (k).)

This bill requires the Director of DSH to forward a request to a county that a petition be filed for a person to be committed to DSH for SVP treatment no later than 20 calendar days prior to the scheduled release date of the person.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014

Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

> When the California Department of Corrections and Rehabilitation (CDCR) and the Board of Parole Hearings (BPH) determine that an individual in custody may be an SVP, based on their commitment offense and a review of their social, criminal, and institutional history, the individual is referred to the DSH for a full SVP evaluation. Following that evaluation, if DSH determines that the individual is an SVP, the Director of DSH is required to request that the District Attorney or County Counsel in the county in which the person was convicted file a petition for commitment. The filing of that petition begins a civil commitment process, which can lead to the individual being confined at Coalinga State Hospital to receive treatment until it is determined that they no longer pose a risk of re-offense.
>
> The SVP Act contains a statutory timeline for each step of the evaluation process, as well as time limits for the filing of the petition and certain court proceedings. It does not, however, contain a time frame for the submission of the request for the filing of a petition to the DA or County Counsel. Because of this, DSH often submits filing materials less than 48 hours before the release of an inmate who has already been determined to qualify as an SVP. The result of these late requests is that the prosecuting agency bears the burden of filing a case and transporting a defendant at the last minute, at an enormous cost and use of resources. The better and long accepted operating practice is for DSH to submit the filing in time for the DA to be able to meaningfully review the request, file the petition, and arrange for transportation of the alleged SVP to the county where trial will be held. In at least one instance in Los Angeles County, the filing request was

submitted too late for the filing of a petition. In several instances, the supporting documents that are necessary for the filing of a petition were not certified and there was little to no time to correct this egregious error by DSH.

The simple solution to this problem is to create a statutory requirement that DSH submit the request for the filing of a petition no fewer than 20 days prior to the release of a person determined to be an SVP. This provides the attorneys with time to meaningfully review and prepare a petition, and protects public safety by helping to ensure that nobody slips through the cracks due to a last minute filing request.

2. Previous SVP Law Amendments

The SVP law was enacted in 1995 in response to concerns that dangerous sex offenders were being released into the community after they served determinate sentences in prison. The law is especially complicated. There are numerous steps and entities involved in the process of assessing and committing a person to DSH as an SVP. The law has been frequently amended to prevent or forestall release of an alleged or committed SVP due to some problem or anomaly arising from the complexity of process. For example, the law was amended by two separate urgency bills in the 1999-2000 legislative session. One bill allowed CDCR to hold a potential SVP 45 days past his parole release date so that DSH experts could complete required SVP evaluations. The other bill allowed commitment proceedings to proceed despite a mistake in law or fact by CDCR as to application of parole rules. In 2015, the law was amended to give prosecutors access to material relied upon by evaluators in producing updated evaluations of alleged SVPs. Other amendments from 1999 through 2015 have concerned notice requirements to communities where an SVP will be released and virtually every other aspect of the law.

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