
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1954 **Hearing Date:** June 11, 2024
Author: Alanis
Version: May 30, 2024
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Sexually violent predators*

HISTORY

Source: Author

Prior Legislation: SB 1074 (Jones) currently in the Assembly
AB 763 (Davies) 2023-2024 not heard
SB 832 (Jones) failed Senate Public Safety 2023
SB 841 (Jones) failed Senate Public Safety 2022
SB 1034 (Atkins) Ch. 880, Stats. 2022
AB 1650 (Cooper) Not heard in Assembly 2022
SB 248 (Bates) Ch. 383, Stats. 2020
SB 1023 (Bates) failed Senate Public Safety 2020
AB 1983 (Gallagher) not heard Assembly Public Safety
AB 303 (Cervantes) Ch. 606, Stats. 2019
AB 2661 (Arambula) Ch. 821, Stats. 2018
AB 1909 (Melendez) Ch. 878, Stats. 2016
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. 1995
SB 1143 (Mountjoy) Ch. 764, Stats. 1995

Support: Arcadia Police Officers' Association; Burbank Police Officers' Association; California Coalition of School Safety Professionals; California Narcotic Officers' Association; California Reserve Peace Officers Association; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Deputy Sheriffs' Association of Monterey County; Fullerton Police Officers' Association; Los Angeles School Police Management Association; Los Angeles School Police Officers Association; Murrieta Police Officers' Association; Newport Beach Police Association; Novato Police Officers Association Palos Verdes Police Officers Association; Peace Officers Research Association of California (PORAC); Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association; Santa Ana Police Officers Association; Upland Police Officers Association

Opposition: None known

Assembly Floor Vote: 73 - 0

PURPOSE

This bill requires a county sheriff or police chief, district attorney, and county counsel of any alternative county, as specified, to provide consultation and assistance in the Department of State Hospitals' ("DSH") process of locating housing for a conditionally released sexually violent predator ("SVP").

Existing law permits a person committed as an SVP to be held for an indeterminate term upon commitment. (Welf. & Inst. Code, §§ 6604 & 6604.1.)

Existing law requires that a person found to have been an SVP and committed to the Department of State Hospitals (DSH) have a current examination on their mental condition made at least yearly. The report shall include consideration of whether 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, subs. (a) & (b).)

Existing law provides that when DSH determines that the person's condition has so changed that he or she is not likely to commit acts of predatory sexual violence while under community treatment and supervision, then the DSH Director shall forward a report and recommendation for conditional release to the court, the prosecuting agency, and the attorney of record for the committed person. (Welf. & Inst. Code, § 6607.)

Existing law establishes a process whereby a person committed as an SVP can 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, (a), (f) & (m).)

Existing law provides that if the petition is made without the consent of the director of the treatment facility, no action may be taken on the petition without first obtaining the written recommendation of the director of the treatment facility. (Welf. & Inst. Code, § 6608, (e).)

Existing law prohibits the court from holding a hearing on a petition for conditional release until the community program director designated by DHS submits a report to the court that makes a recommendation as to the appropriateness of placing the inmate in a state-operated forensic conditional release program. (Welf. & Inst. Code, § 6608, (f); Pen. Code, § 1605, (a).)

Existing law requires the court to place the committed person in a forensic conditional release program operated by the state for one year if it finds that the person is not a danger to others due to their mental disorder diagnosis while under treatment and supervision in the community. Specifies that the program must include outpatient care. (Welf. & Inst. Code, § 6608, (g).)

Existing law provides that before actually placing a person on conditional release, the community program director designated by DSH must recommend the program most appropriate for supervising and treating the person. (Welf. & Inst. Code, § 6608, (h).)

Existing law prohibits a conditionally-released person from being placed within a quarter-mile of any kindergarten through twelfth grade school if the court finds that the person has “a history of improper sex conduct with children” or has previously been convicted of specified sex offenses. (Welf. & Inst. Code, § 6608.5, (f).)

Existing law states that the county of domicile shall designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons committed as SVPs who are about to be conditionally released. (Welf. & Inst. Code, § 6608.5, (d).)

Existing law specifies that in recommending a specific placement for community outpatient treatment, DSH or its designee shall consider all of the following: a) The concerns and proximity of the victim or the victim’s next of kin; and b) The age and profile of the victim or victims in the sexually violent offenses committed by the person subject to placement. The “profile” of a victim includes, but is not limited to, gender, physical appearance, economic background, profession, and other social or personal characteristics. (Welf. & Inst. Code, § 6608.5, (e)(1)-(2).)

Existing law states that if the court determines that placement of a person in the county of his or her domicile is not appropriate, the court shall consider the following circumstances in designating his or her placement in a county for conditional release: a) If and how long the person has previously resided or been employed in the county; and b) If the person has next of kin in the county. (Welf. & Inst. Code, § 6608.5, (g)(1)-(2))

Existing law specifies that when DSH makes a recommendation to the court for community outpatient treatment for any person committed as a SVP, or possibilities of community placement exist, DSH must notify the sheriff or chief of police, or both, the district attorney, or the county’s designated counsel, that have jurisdiction over the following locations: a) The community in which the person may be released for community outpatient treatment; b) The community in which the person maintained his or her last legal residence; and, c) The county that filed for the person’s civil commitment. (Welf. and Inst. Code, § 6609.1 (a)(1)(A)-(C).) 16

Existing law requires notice be given at least 30 days prior to DSH's submission of its recommendation to the court in those cases in which DSH recommended community outpatient treatment, or in which DSH is recommending or proposing a placement location, or in the case of a petition or placement proposal by someone other than DSH, within 48 hours after becoming aware of the petition or placement proposal. (Welf. & Inst. Code, 6609.1, subd. (a)(4).) 17) Specifies that agencies receiving the notice may provide written comment to the DSH and the court regarding the impending release, placement, location, and conditions of release. All community agency comments shall be combined and consolidated. (Welf. & Inst. Code, 6609.1, subd. (b).)

Existing law requires that the agencies' comments and DSH's statements be considered by the court which shall, based on those comments and statements, approve, modify, or reject the DSH's recommendation or proposal regarding the community or specific address to which the person is scheduled to be released or the conditions that shall apply to the release if the court finds that DSH's recommendation or proposal is not appropriate. (Welf. & Inst. Code, 6609.1, subd. (c).)

This bill mandates, when determining a conditionally released SVP's "county of domicile," and subsequent placement, that a sheriff or chief police chief, the county counsel, and the district attorney of an alternative placement county where a potential placement has been identified and is being considered by DSH to provide assistance and consultation in DSH's process of locating and securing housing for a sexually violent predator.

This bill requires that notice to the police chief or sheriff, district attorney, or county's designated counsel of a SVP's conditional or unconditional release into the community, as specified, be made via electronic means and certified mail.

COMMENTS

1. Need for This Bill

According to the author:

After extensive conversations with the Department of State Hospitals in 2024, following a high profile case involving the placement of a sexually violent predator in the Central Valley, it was determined that current state law omits critical parties necessary to ensure both the safety of the public and sufficient housing and treatment of the SVP. It was also discovered that the only form of required notification from the state to local parties that are required for placement, was an electronic mail application. AB 1954 requires a higher level of engagement from critical parties with knowledge of the communities being considered and a better form of notification in that process. These changes help ensure that the counties considered for placement of the SVP have the necessary input and notification to prepare for placement of the SVP and are able to offer them sufficient housing and treatment.

2. SVP Law Generally

The Sexually Violent Predator Act (SVPA) establishes an extended civil commitment scheme for sex offenders who are about to be released from prison, but are referred to the DSH for treatment in a state hospital, because they have suffered from a mental illness which causes them to be a danger to the safety of others.

The DSH uses specified criteria to determine whether an individual qualifies for treatment as a SVP. Under existing law, a person may be deemed a SVP if: (a) the defendant has committed specified sex offenses against two or more victims; (b) the defendant has a diagnosable 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; and, (3) two licensed psychiatrists or psychologists concur in the diagnosis. If both clinical evaluators find that the person meets the criteria, the case is referred to the county district attorney who may file a petition for civil commitment.

Once a petition has been filed, a judge holds a probable cause hearing; and if probable cause is found, the case proceeds to a trial at which the prosecutor must prove to a jury beyond a reasonable doubt that the offender meets the statutory criteria. The state must prove "[1] a person who has been convicted of a sexually violent offense against [at least one] victim[] and [2] who has a diagnosed mental disorder that [3] makes the person a danger to the health and safety of others in that it is likely that he or she will engage in [predatory] sexually violent criminal behavior." (*Cooley v. Superior Court (Martinez)* (2002) 29 Cal.4th 228, 246.)

If the prosecutor meets this burden, the person then can be civilly committed to a DSH facility for treatment.

The DSH must conduct a yearly examination of a SVP's mental condition and submit an annual report to the court. This annual review includes an examination by a qualified expert. (Welf. & Inst. Code, § 6604.9.) In addition, DSH has an obligation to seek judicial review any time it believes a person committed as a SVP no longer meets the criteria, not just annually. (Welf. & Inst. Code, § 6607.)

The SVPA was substantially amended by Proposition 83 ("Jessica's Law"), which became operative on November 7, 2006. Originally, a SVP commitment was for two years; but now, under Jessica's Law, a person committed as a SVP may be held for an indeterminate term upon commitment or until it is shown that the defendant no longer poses a danger to others. (See *People v. McKee* (2010) 47 Cal.4th 1172, 1185-87.) Jessica's Law also amended the SVPA to make it more difficult for SVPs to petition for less restrictive alternatives to commitment. These changes have survived due process, ex post facto, and, more recently, equal protection challenges. (See *People v. McKee, supra*, 47 Cal.4th 1172 and *People v. McKee* (2012) 207 Cal.App.4th 1325.)

3. Obtaining Release from Commitment

A person committed as a SVP may petition the court for conditional release or unconditional discharge after one year of commitment. (Welf. & Inst. Code, § 6608, subd. (a).) The petition can be filed with, or without, the concurrence of the Director of State Hospitals. The Director's concurrence or lack thereof makes a difference in the process used.

A SVP can, with the concurrence of the Director of State Hospitals, petition for unconditional discharge if the patient "no longer meets the definition of a SVP," or for conditional release. (Welf. & Inst. Code, § 6604.9, subd. (d).) If an evaluator determines that the person no longer qualifies as a SVP or that conditional release is in the person's best interest and conditions can be imposed to adequately protect the community, but the Director of State Hospitals disagrees with the recommendation, the Director must nevertheless authorize the petition. (*People v. Landau* (2011) 199 Cal.App.4th 31, 37-39.) When the petition is filed with the concurrence of the DSH, the court orders a show-cause hearing. (Welf. & Inst. Code, § 6604.9, subd. (f).) If probable cause is found, the patient thereafter has a right to a jury trial and is entitled to relief unless the district attorney proves "beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent behavior if discharged." (Welf. & Inst. Code, § 6605.)

A committed person may also petition for conditional release or unconditional discharge notwithstanding the lack of recommendation or concurrence by the Director of State Hospitals. (Welf. & Inst. Code, § 6608, subd. (a).) Upon receipt of this type of petition, the court "shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing." (Welf. & Inst. Code, § 6608, subd. (a).)¹ If the petition is not found to be frivolous, the court is required to hold a hearing. (*People v. Smith* (2013) 216 Cal.App.4th 947.)

The SVPA does not define the term "frivolous." The courts have applied the definition of "frivolous" found in Code of Civil Procedure section 128.5, subdivision (b)(2): "totally and completely without merit" or "for the sole purpose of harassing an opposing party." (*People v. Reynolds* (2010) 181 Cal.App.4th 1402, 1411; see also *People v. McKee, supra*, 47 Cal.4th 1172; *People v. Collins* (2003) 110 Cal.App.4th 340, 349.) Additionally, in *Reynolds, supra*, 181 Cal.App.4th at p. 1407, the court interpreted Welfare and Institutions Code section 6608 to require the petitioner to allege facts in the petition that will show he or she is not likely to engage in sexually-violent criminal behavior due to a diagnosed mental disorder, without supervision and treatment in the community, since that is the relief requested.

Once the court sets the hearing on the petition, then the petitioner is entitled to both the assistance of counsel, and the appointment of an expert. (*People v. McKee, supra*, 47 Cal.4th 1172, 1193.) At the hearing, the person petitioning for release has the burden of proof by a preponderance of the evidence. (Welf. & Inst. Code, § 6608, subd. (i); *People v. Rasmuson* (2006) 145 Cal.App.4th 1487, 1503.) If the petition is denied, the SVP may not file a subsequent petition until one year from the date of the denial. (Welf. & Inst. Code, § 6608, subd. (h).)

4. County of Domicile

An SVP conditionally released for outpatient supervision and treatment must be placed in the county of domicile prior to the person's incarceration, unless the court finds that extraordinary

¹ Recently, in *People v. McCloud* (2013) 213 Cal.App.4th 1076, the Court of Appeal recognized that the provision in Welfare and Institutions Code section 6608, subdivision (a) allowing for dismissal of a frivolous petition for release without a hearing, may violate the equal protection clause. The petitioner's equal protection claim was based on the fact that "[n]o other commitment scheme allows the judge to deem the petition 'frivolous' and thereby deny the petitioner a hearing." (*Id.* at p. 1087.) The court found there might well be actual disparate treatment of similarly situated persons—and if there was disparate treatment, the State might or might not be justified in so distinguishing between persons. The court remanded the case for further proceedings on the equal protection claim. (*Id.* at p. 1088.)

circumstances require placement outside the county of domicile. (Welf. & Inst. Code, § 6608.5, subd. (a)(1).) The county of domicile is the county where the person has their true, fixed, and permanent home and principal residence and to which they have manifested the intention of returning whenever they are absent. (*Id.*)

For purposes of determining the county of domicile, the court may consider information found on a California's driver's license, California identification card, recent rent or utilities receipt, printed personalized checks or other recent banking documents, or any arrest record. If no information can be verified, the county of domicile shall be considered the county in which the person was arrested and convicted or last returned on parole. (Welf. & Inst. Code, § 6608.5, subd. (b)(1).) If that county is not suitable, the court, DSH, and CDCR may choose alternative county for placement.

Based on input from local law enforcement, a court may approve, modify, or reject the recommended or proposed specific address within that community or proposed specific address within that community. A court could approve a specific city but reject a specific address in that city. Therefore, simply having a verified address is not sufficient to satisfy the terms of a conditional release. The city and the address must be approved by the court. (See Welf. & Inst. Code, 6609.1, subd. (a)(5)A.) Furthermore, agencies receiving notice of an SVP's placement in a specific county may comment on the placement or location of release, and may suggest alternative locations for placement within a community. (Welf. & Inst. Code, § 6609.1, subd. (a)(5)(A) and (b).)

Based on the all the evidence, the court determines whether approve, reject, or modify the terms of conditional release. Welfare and Institutions Code section 6609.1 requires a community be given 30 days' notice if an SVP is pending conditional release in that community. (Welf. & Inst. Code, § 6609.1, subd. (a)(4).) Notice includes the name and proposed placement address before an SVP is released into the community.

Identifying the county of domicile for an SVP is challenging because in many cases, these individuals have been incarcerated for years – first in state prison and then on civil commitment. There may be no evidence of county of domicile. The SVPA was enacted in 1996 – and used very heavily in the last 15 or 20 years. If a SVP was originally from Hancock Park in Los Angeles in the 1990s – returning to Los Angeles may not be an option because a SVP cannot live near a school or park, or be anywhere children regularly congregate. There may also be additional stay away orders in place that prevent placement in certain areas.

A finding that a person is eligible for conditional release really eliminates the legal grounds for holding the person in custody. Again, civil commitment is not a prison sentence wherein a grant of parole may be determined by examining the offender and the nature of the offense.

It is a mental health diagnosis wherein the goal of commitment is to treat the mental illness so the person may ultimately be released into the community. (*Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1171 [“Here, for instance, the Legislature disavowed any ‘punitive purpose [],’ and declared its intent to establish ‘civil commitment’ proceedings in order to provide ‘treatment’ to mentally disordered individuals who cannot control sexually violent criminal behavior. The Legislature also made clear that, despite their criminal record, persons eligible for commitment and treatment as SVP's are to be viewed ‘not as criminals, but as sick persons.’ Consistent with these remarks, the SVPA was placed in the Welfare and Institutions Code, surrounded on each

side by other schemes concerned with the care and treatment of various mentally ill and disabled groups.”].)

Also, conditional release requires weekly individual contact with the SVP, group treatment, and weekly drug screening. It may also include polygraph examinations, anti-androgen therapy, GPS tracking, increased supervision through random visits, and community notification. Furthermore, there are very few SVPs placed on conditional release. The Sex Offender Management Board (“SOMB”) reports in 2022 Year-End Report that between 1998 and 2021, a total of 900 people were committed as SVPs and 21 people are currently in the SVP conditional release program.

This bill provides that when an alternative locality is chosen for potential placement, the sheriff or chief of police, district attorney and county counsel shall provide assistance and consultation to the Department in choosing a location. Under existing law those parties in the county of domicile shall provide such assistance but there is no requirement when placement is in an alternative county.

This bill also requires notice to the county where a SVP will be placed to be by both email and certified mail to assure notice to all the relevant parties.

-- END --