
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 841 **Hearing Date:** April 5, 2022
Author: Jones
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Urgency: Yes **Fiscal:** Yes
Consultant: MK

Subject: *Sexually violent predators*

HISTORY

Source: Author

Prior Legislation: 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: County of San Diego

Opposition: ACLU California Action; California Public Defenders Association

PURPOSE

The purpose of this bill is to require the Department of State Hospitals to take specified actions before placing a sexually violent predator in the community and to require the Department of State Hospitals, the Department of Corrections and Rehabilitation, and the Department of Forestry and Fire Protection to report to the Governor and Legislature the status of quarters available for the placement of sexually violent predators.

Existing law provides for the civil commitment for psychiatric and psychological treatment of a prison inmate found to be an SVP after the person has served their prison commitment. This is known as the Sexually Violent Predator Act (SVPA). (Welf. & Inst. Code, § 6600, et seq.)

Existing 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, (a)(1).) 3)

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, subds. (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 provides that notwithstanding any other provision of law, the State Department of Health (department) shall do the following:

- a) Prior to any action by the department, or a vendor, regarding the placement of a sexually violent predator in a specific location in a county, the Director of State Hospitals (Director) shall verify with the county's executive officer the supervisorial district in which the placement is proposed.
- b) The Director shall prepare an annual report on the number of sexually violent predators under department supervision and specify in which counties, and supervisorial districts, the sexually violent predators are located. The report shall be posted on the website annually.
- c) The Director is responsible for ensuring that department vendors consider public safety as the overriding consideration in the placement of a sexually violent predator.
- d) The Director shall approve a potential placement before a department employee or vendor signs a lease or rental agreement regarding the placement of a sexually violent predator.

This bill provides that the Director, the Secretary of Department of Corrections and Rehabilitation, and the Director of Forestry and Fire Protection shall report to the Governor and the Legislature by December 31, 2022, the status of trailers, or other suitable placement quarters, available at their property for potential placement of sexually violent predators.

This bill states that it shall be cited as the Sexually Violent Predator, Accountability, Fairness and Enforcement Act.

This bill makes the following legislative finding and declarations:

- a) The placement of sexually violent predators has historically been done in secret and deceptive ways.
- b) Sexually violent predators have been dumped in residential neighborhoods which have caused numerous problems for these neighborhoods and wasted tax dollars.
- c) The state has often placed far too many sexually violent predators in the same areas, overburdening specific communities.
- d) That it is the intent of the Legislature that the placement of sexually violent predators be more equitable and transparent.

This bill contains an urgency clause.

COMMENTS

1. Need for This Bill

According to the author:

An SVP is an individual convicted of a sexually violent offense and diagnosed with a mental disorder that causes them to be a danger to others with a high likelihood to reoffend.

When an SVP is recommended for the Forensic Conditional Release Program (CONREP), The Department of State Hospitals (DSH) is responsible for notifying the county of domicile (where the SVP resided prior to incarceration), coordinating their release placement, and overseeing their treatment. The Department then contracts with Liberty Healthcare to provide all services for the CONREP throughout California.

Once the court approves an SVP's participation in CONREP, a search for a location for the placement begins. After locating a potential placement that meets all requirements, Liberty Healthcare seeks approval from the court for the SVP placement. If the court approves the placement, a public notification is made and a 30-day public comment period begins. At the end of the public comment period, the court may then make a final placement order, or instruct CONREP to find a different placement.

While CONREP is tasked with upholding public safety by following all relevant placement guidelines in law, such as Jessica's Law (prohibits registered sex offenders from living within 2,000 feet of a school or park), only the minimum standards are considered. Furthermore, since DSH has contracted out the entirety of the CONREP process, Liberty Healthcare exclusively handles this sensitive placement process. This has resulted in several botched placement efforts where Liberty Healthcare has attempted to place SVPs in inappropriate locations causing community outrage. In many cases, the courts have intervened to deny placement, but Liberty Healthcare has often already started the leasing process. By choosing placements that should never have been considered in the first place, the underlying placement is unnecessarily delayed.

CONREP often then turns to more rural parts of counties where there are fewer people to object to the placement. However, these parts of the county often become disproportionately saturated with SVP placements, most of whom did not come from those parts of the county.

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. Additional requirements before placement

This requires the State Department of State Hospitals (department) to take specific actions relating to the placement of a SVP.

a. Verify the county supervisory district

This bill requires the Director of State Hospitals (Director) to verify the county supervisory district prior to the placement of a SVP in a county.

What is the purpose of verifying the supervisory district? Shouldn't the person be placed in the most appropriate place in a county which might include housing, treatment,

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.)

transportation, and employment options? It is also not clear what the Director is supposed to do with this information other than include it in a report.

b. Annual report

This bill requires the Director to prepare a report on the number of sexually violent predators under department supervision and specify which counties, and supervisorial districts, the sexually violent predators are located. The report shall be posted annually by March 25.

What is the intent of this report? The County District Attorney is the person that seeks to have a person designated a sexually violent predator so do some counties seek this designation more regularly than other counties and if so then would a report showing more SVPs in some counties more than others demonstrate anything?

c. Public safety

This bill requires that the Directors is responsible for ensuring that department vendors consider public safety as the overriding consideration in the placement of an SVP. Is how public safety can be ensured subjective? Does it mean a person have adequate housing, even if placed in communities that might not be happy with their presence? Does it mean they live in a facility that can give them treatment or they have access to transportation to treatment? Does it mean they are located near a job?

d. Director approval of housing

This bill requires the Director to approve a potential placement before a department employee or vendor signs a lease or rental agreement regarding the placement of a SVP. Is it appropriate to have the Director personally approve of the housing? The finding of housing for an SVP is a multi-step process that includes feedback from the court along the way. Should the Director be able to override the process?

5. Report on available trailers

This bill requires the Director of State Hospitals, the Secretary of the Department of Corrections and Rehabilitation, and the Director of Forestry and Fire Protection to report to the Governor and the Legislature by December 31, 2022, the status of trailers or other suitable placement quarters available on their properties that could house SVP.

An SVP who is released “no longer meets the definition of an SVP”. Does the bill intend to have more SVPs placed in such housing options? Wouldn't it be better for public safety, in the long run, to help an SVP learn to live safely in a community instead of relegating them to housing on state property? Is not allowing a person, who has not longer been deemed to be a danger, back in a community Constitutional?

6. Legislative intent

This bill make a number of codified Legislative findings and declarations. The Committee may want to consider whether they agree with them.

- a) The placement of sexually violent predators has historically been done in secret and deceptive ways.
- b) Sexually violent predators have been dumped in residential neighborhoods which have caused numerous problems for these neighborhoods and wasted tax dollars.
- c) The state has often placed far too many sexually violent predators in the same areas, overburdening specific communities.
- d) That it is the intent of the Legislature that the placement of sexually violent predators be more equitable and transparent.

7. Argument in Support

San Diego supports this bill stating:

A sexually violent predator is defined as an individual who has been convicted of a sexually violent offense and who has a diagnosed mental disorder that makes the individual a danger to others. Current law requires the State to notify local law enforcement when the Department of State Hospitals (DSH) makes a recommendation to the court to place a sexually violent predator into community outpatient treatment, or when a sexually violent predator has petitioned a court for conditional release under supervision and treatment in the community.

SB 841, also known as the Sexually Violent Predator Accountability, Fairness, and Enforcement Act (SAFE Act), would, among other things, require DSH to verify with a county executive officer the supervisorial district in which a sexually violent predator is proposed for placement and to prepare an annual report on the number of sexually violent predators under their supervision and specify in which counties and supervisorial districts.

Predators who commit acts of sexual violence are a danger to the health and safety of our local communities. In San Diego County, there are already five sexually violent predators placed in housing, and three more awaiting placement hearings. The current process for releasing sexually violent predators into our communities puts individuals and families at risk. SB 841 enhances the notification of a sexually violent predators' placement into a community.

8. Argument in Opposition

The California Public Defenders Association opposes this bill stating:

SB 841 would construct bureaucratic obstacles and plant political landmines by laying the groundwork for even more extended fights over where conditionally released SVPs could be released into the community. Ultimately, this would jeopardize the constitutionality of the entire SVPA. By making it more difficult to place an individual after a court has found that the individual is *not* a danger to others due to a diagnosed mental condition while under supervision and treatment in the community, SB 841 would lead to the SVPA running afoul of the U.S. Supreme Court precedents upholding similar civil commitment schemes detaining individuals after their prison sentences only if they are predicated on a finding that the individual is *currently* dangerous.

SB 841 spurns this approach. The provision of SB 841 that requires the Department of State Hospitals to “verify with the county’s executive officer the supervisorial district in which placement is proposed” has no rational relationship to public safety or the release of an individual who has been found to be safe under supervision in the community. The requirement that CDCR and the Department of Forestry and Fire Protection report “the status of trailers, or other suitable placement quarters, available at their properties for potential placement of sexually violent predators” is the first step in forcing the Department of State Hospitals to house individuals who have been found to be safe to release under supervision in the community, at either another prison or in the deep woods. This is akin to banishment from the community.

Under existing law, when it recommends community placement of an individual who has been adjudicated an SVP, the Department of State Hospitals must notify the community’s law enforcement, its designated counsel, and its district attorney. Except in extraordinary circumstances, the individual must be released to the county in which they were domiciled before they were incarcerated.

An individual is granted conditional release pursuant to WIC 6608 when the court determines that the person is not a danger to others while supervised in the community. Before an individual is released from the state hospital on conditional release, *they have been found by a court, based on mental health expert opinion, to no longer present a danger to the public.* Liberty Healthcare is the organization contracted with the Department of State Hospital and is responsible for providing treatment and supervision of the SVP patient in the community. The first task that Liberty Healthcare undertakes when an SVP patient is granted conditional release is finding suitable placement in the community. The community that the conditionally released SVP patient shall be placed in is determined by the county of domicile prior to the SVPs incarceration. Local law enforcement and the district attorney weigh in at the court hearing which determines where the individual is to be released.

Public defenders represent most of the individuals who have been committed to Coalinga State Hospital under the SVPA. Given this experience, public defenders can attest to where SVPs are held at Coalinga State Hospital. Coalinga State Hospital is located next door to Pleasant Valley State Prison. From the outside, both facilities look starkly similar, encircled by high fences topped by concertina wire, guards search individuals going into both facilities. Looking at the physical plant there is not much separating a state prison sentence from an SVP commitment. The United States Supreme Court has found SVP commitments constitutional as long as they only detain individuals who are currently dangerous because of a mental disorder. SB 841 erodes the underpinnings of the SVPA by creating the conditions which will lead to its unconstitutionality.