

**Introduced by Senator Denham**

February 18, 2004

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An act to amend Sections 6608 and 6609.1 of, and to add Section 6609.4 to, the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

SB 1366, as introduced, Denham. Sexually violent predators: conditional release: notice.

Existing law provides for the commitment of convicted sexually violent predators to the custody of the State Department of Mental Health for treatment. If the Director of Mental Health determines that the person's diagnosed mental disorder has so changed that the person is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the director is required to forward a report and recommendation for conditional release to the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and the court is required to set a hearing.

Under existing law, a person who has been committed as a sexually violent predator may petition the court for conditional release with or without the recommendation or concurrence of the Director of Mental Health. Upon receipt of a petition from the Director of Mental Health or a committed person, if that petition is not based upon frivolous grounds, the court is required to 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; if not, the court is required

to order the committed person to be placed with an appropriate forensic conditional release program operated by the state for one year. Under existing law, that placement must occur within 21 days after receiving notice of the court's finding.

Existing law requires the department to provide notice to certain local law enforcement agencies in certain communities, including in the community in which the person may be released for community outpatient treatment. Existing law requires this notice to be made 15 days prior to the department's recommendation to the court for community outpatient treatment. Existing law also requires the Department of Corrections to notify the State Department of Mental Health, and local law enforcement agencies, when the court orders the release of a sexually violent predator.

This bill instead would require placement of a sexually violent predator into a conditional release program within 50 days of the court's finding, and would require notice to local law enforcement agencies by the department or the Department of Corrections 45 days prior to making its recommendation to the court, or the court's release of the sexually violent predator. This bill would authorize local law enforcement agencies that received notice pursuant to the bill to offer placement suggestions and alternatives to the department or court.

This bill would require the department to provide reasonable public notice to the community into which a person committed as a sexually violent predator may be released, at least 45 days prior to the department's submission of its recommendation to the court for conditional release. It would require the notice to include the name of the person who may be released into the community and a description of the specific crime or crimes for which the person was committed as a sexually violent predator. This bill would authorize the department to modify its placement recommendation based on the comments from law enforcement agencies.

This bill would require a nonparolee who is conditionally released under these provisions to be placed in the county of civil commitment, except under extraordinary circumstances, as defined in the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6608 of the Welfare and Institutions  
2 Code is amended to read:

3 6608. (a) Nothing in this article shall prohibit the person who  
4 has been committed as a sexually violent predator from petitioning  
5 the court for conditional release and subsequent unconditional  
6 discharge without the recommendation or concurrence of the  
7 Director of Mental Health. If a person has previously filed a  
8 petition for conditional release without the concurrence of the  
9 director and the court determined, either upon review of the  
10 petition or following a hearing, that the petition was frivolous or  
11 that the committed person's condition had not so changed that he  
12 or she would not be a danger to others in that it is not likely that  
13 he or she will engage in sexually violent criminal behavior if  
14 placed under supervision and treatment in the community, then the  
15 court shall deny the subsequent petition unless it contains facts  
16 upon which a court could find that the condition of the committed  
17 person had so changed that a hearing was warranted. Upon receipt  
18 of a first or subsequent petition from a committed person without  
19 the concurrence of the director, the court shall endeavor whenever  
20 possible to review the petition and determine if it is based upon  
21 frivolous grounds and, if so, shall deny the petition without a  
22 hearing. The person petitioning for conditional release and  
23 unconditional discharge under this subdivision shall be entitled to  
24 assistance of counsel.

25 (b) The court shall give notice of the hearing date to the  
26 attorney designated in subdivision (i) of Section 6601, the retained  
27 or appointed attorney for the committed person, and the Director  
28 of Mental Health at least 15 court days before the hearing date.

29 (c) No hearing upon the petition shall be held until the person  
30 who is committed has been under commitment for confinement  
31 and care in a facility designated by the Director of Mental Health  
32 for not less than one year from the date of the order of commitment.

33 (d) The court shall hold a hearing to determine whether the  
34 person committed would be a danger to the health and safety of  
35 others in that it is likely that he or she will engage in sexually  
36 violent criminal behavior due to his or her diagnosed mental  
37 disorder if under supervision and treatment in the community. If  
38 the court at the hearing determines that the committed person



1 would not be a danger to others due to his or her diagnosed mental  
2 disorder while under supervision and treatment in the community,  
3 the court shall order the committed person placed with an  
4 appropriate forensic conditional release program operated by the  
5 state for one year. A substantial portion of the state-operated  
6 forensic conditional release program shall include outpatient  
7 supervision and treatment. The court shall retain jurisdiction of the  
8 person throughout the course of the program. At the end of one  
9 year, the court shall hold a hearing to determine if the person  
10 should be unconditionally released from commitment on the basis  
11 that, by reason of a diagnosed mental disorder, he or she is not a  
12 danger to the health and safety of others in that it is not likely that  
13 he or she will engage in sexually violent criminal behavior. The  
14 court shall not make this determination until the person has  
15 completed at least one year in the state-operated forensic  
16 conditional release program. The court shall notify the Director of  
17 Mental Health of the hearing date.

18 (e) Before placing a committed person in a state-operated  
19 forensic conditional release program, the community program  
20 director designated by the State Department of Mental Health shall  
21 submit a written recommendation to the court stating which  
22 forensic conditional release program is most appropriate for  
23 supervising and treating the committed person. If the court does  
24 not accept the community program director's recommendation,  
25 the court shall specify the reason or reasons for its order on the  
26 record. The procedures described in Sections 1605 to 1610,  
27 inclusive, of the Penal Code shall apply to the person placed in the  
28 forensic conditional release program.

29 (f) If the court determines that the person should be transferred  
30 to a state-operated forensic conditional release program, the  
31 community program director, or his or her designee, shall make the  
32 necessary placement arrangements and, within ~~21~~ 50 days after  
33 receiving notice of the court's finding, the person shall be placed  
34 in the community in accordance with the treatment and  
35 supervision plan unless good cause for not doing so is presented  
36 to the court.

37 (g) If the court rules against the committed person at the trial  
38 for unconditional release from commitment, the court may place  
39 the committed person on outpatient status in accordance with the



1 procedures described in Title 15 (commencing with Section 1600)  
2 of Part 2 of the Penal Code.

3 (h) If the court denies the petition to place the person in an  
4 appropriate forensic conditional release program or if the petition  
5 for unconditional discharge is denied, the person may not file a  
6 new application until one year has elapsed from the date of the  
7 denial.

8 (i) In any hearing authorized by this section, the petitioner shall  
9 have the burden of proof by a preponderance of the evidence.

10 (j) If the petition for conditional release is not made by the  
11 director of the treatment facility to which the person is committed,  
12 no action on the petition shall be taken by the court without first  
13 obtaining the written recommendation of the director of the  
14 treatment facility.

15 (k) Time spent in a conditional release program pursuant to this  
16 section shall not count toward the term of commitment under this  
17 article unless the person is confined in a locked facility by the  
18 conditional release program, in which case the time spent in a  
19 locked facility shall count toward the term of commitment.

20 SEC. 2. Section 6609.1 of the Welfare and Institutions Code  
21 is amended to read:

22 6609.1. (a) When the State Department of Mental Health  
23 makes a recommendation to the court for community outpatient  
24 treatment for any person committed as a sexually violent predator,  
25 or when a person who is committed as a sexually violent predator  
26 pursuant to this article has petitioned a court pursuant to Section  
27 6608 for conditional release under supervision and treatment in the  
28 community pursuant to a conditional release program, or has  
29 petitioned a court pursuant to Section 6608 for subsequent  
30 unconditional discharge, and the department is notified, or is  
31 aware, of the filing of the petition, the department shall notify the  
32 sheriff or chief of police, or both, the district attorney, or the  
33 county's designated counsel, that have jurisdiction over the  
34 following locations:

35 (1) The community in which the person may be released for  
36 community outpatient treatment.

37 (2) The community in which the person maintained his or her  
38 last legal residence as defined by Section 3003 of the Penal Code.

39 (3) The county that filed for the person's civil commitment  
40 pursuant to this article.



1 The department shall also notify the Sexually Violent Predator  
2 Parole Coordinator of the Department of Corrections, if the person  
3 is otherwise subject to parole pursuant to Article 1 (commencing  
4 with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal  
5 Code.

6 The notice shall be given at least ~~15~~ 45 days prior to the  
7 department's submission of its recommendation to the court in  
8 those cases in which the department recommended community  
9 outpatient treatment.

10 (b) When the State Department of Mental Health makes a  
11 recommendation to pursue recommitment, makes a  
12 recommendation not to pursue recommitment, or seeks a judicial  
13 review of commitment status pursuant to subdivision (f) of Section  
14 6605, of any person committed as a sexually violent predator, it  
15 shall provide written notice of that action to the sheriff or chief of  
16 police, or both, and to the district attorney, that have jurisdiction  
17 over the following locations:

18 (1) The community in which the person maintained his or her  
19 last legal residence as defined by Section 3003 of the Penal Code.

20 (2) The community in which the person will probably be  
21 released, if recommending not to pursue recommitment.

22 (3) The county that filed for the person's civil commitment  
23 pursuant to this article.

24 The State Department of Mental Health shall also notify the  
25 Sexually Violent Predator Parole Coordinator of the Department  
26 of Corrections, if the person is otherwise subject to parole pursuant  
27 to Article 1 (commencing with Section 3000) of Chapter 8 of Title  
28 1 of Part 3 of the Penal Code. The notice shall be made at least 15  
29 days prior to the department's submission of its recommendation  
30 to the court.

31 Those agencies receiving the notice referred to in this  
32 subdivision shall have 15 days from receipt of the notice to provide  
33 written comment to the department regarding the impending  
34 release. Those comments shall be considered by the department,  
35 which may modify its decision regarding the community in which  
36 the person is scheduled to be released, based on those comments.

37 (c) If the court orders the release of a sexually violent predator,  
38 the court shall notify the Sexually Violent Predator Parole  
39 Coordinator of the Department of Corrections. The Department of  
40 Corrections shall notify the State Department of Mental Health,



1 the sheriff or chief of police, or both, and the district attorney, that  
2 have jurisdiction over the following locations:

- 3 (1) The community in which the person is to be released.
- 4 (2) The community in which the person maintained his or her  
5 last legal residence as defined in Section 3003 of the Penal Code.

6 The Department of Corrections shall make the notifications  
7 required by this subdivision regardless of whether the person  
8 released will be serving a term of parole after release by the court.  
9 *The notice shall be given at least 45 days prior to the person's*  
10 *release.*

11 (d) If the person is otherwise subject to parole pursuant to  
12 Article 1 (commencing with Section ~~300~~ 3000) of Chapter 8 of  
13 Title 1 of Part 3 of the Penal Code, to allow adequate time for the  
14 Department of Corrections to make appropriate parole  
15 arrangements upon release of the person, the person shall remain  
16 in physical custody for a period not to exceed 72 hours or until  
17 parole arrangements are made by the Sexually Violent Predator  
18 Parole Coordinator of the Department of Corrections, whichever  
19 is sooner. To facilitate timely parole arrangements, notification to  
20 the Sexually Violent Predator Parole Coordinator of the  
21 Department of Corrections of the pending release shall be made by  
22 telephone or facsimile and, to the extent possible, notice of the  
23 possible release shall be made in advance of the proceeding or  
24 decision determining whether to release the person.

25 (e) The notice required by this section shall be made whether  
26 or not a request has been made pursuant to Section 6609.

27 (f) The time limits imposed by this section are not applicable  
28 when the release date of a sexually violent predator has been  
29 advanced by a judicial or administrative process or procedure that  
30 could not have reasonably been anticipated by the State  
31 Department of Mental Health and where, as the result of the time  
32 adjustments, there is less than 30 days remaining on the  
33 commitment before the inmate's release, but notice shall be given  
34 as soon as practicable. In no case shall notice required by this  
35 section to the appropriate agency be later than the day of release.

36 (g) The provisions of this section are severable. If any  
37 provision of this section or its application is held invalid, that  
38 invalidity shall not affect other provisions or applications that can  
39 be given effect without the invalid provision or application.



1 SEC. 3. Section 6609.4 is added to the Welfare and  
2 Institutions Code, to read:

3 6609.4. (a) The State Department of Mental Health shall  
4 provide reasonable public notice to the community into which a  
5 person committed as a sexually violent predator may be released  
6 that a sexually violent predator may be conditionally released into  
7 the community, in either of the following cases:

8 (1) Those cases in which the department recommended  
9 community outpatient treatment, pursuant to subdivision (a) of  
10 Section 6609.1.

11 (2) Those cases in which the department has been notified by  
12 the Department of Corrections that the court has ordered the  
13 release of a sexually violent predator, pursuant to subdivision (c)  
14 of Section 6609.1.

15 (b) The notice required by this section shall be given at least 45  
16 days prior to the department’s submission of its recommendation  
17 to the court or the release of the person by the court, and shall  
18 include the name of the person who may be released into the  
19 community and a description of the specific crime or crimes for  
20 which the person was committed as a sexually violent predator.

21 (c) Those law enforcement agencies receiving the notice  
22 referred to in subdivision (a) or (c) of Section 6609.1 shall have 15  
23 days from receipt of that notice to provide written comment to the  
24 department or the court regarding the impending release, and to  
25 offer placement suggestions and alternatives. The department or  
26 court shall consider the recommendations, and may modify its  
27 decision regarding the community in which the person is  
28 scheduled to be released, based on those comments.

29 (d) (1) Except with respect to a parolee placed pursuant to  
30 Section 3003 of the Penal Code, a person the department has  
31 recommended for community outpatient treatment pursuant to  
32 subdivision (a) of Section 6609.1 shall be released in the county  
33 that filed for the person’s civil commitment pursuant to this article,  
34 unless extraordinary circumstances prevent it.

35 (2) For purposes of this subdivision, “extraordinary  
36 circumstances” means that a victim or family member of a victim  
37 of the person committed as a sexually violent predator resides in  
38 the county of civil commitment.

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