

AMENDED IN ASSEMBLY MARCH 24, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1607

Introduced by Assembly Member Fox

February 5, 2014

An act to amend ~~Section~~ *Sections 6608, 6608.5, and 6608.8* of the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

AB 1607, as amended, Fox. Sexually violent predators.

Existing law provides for the civil commitment of criminal offenders who have been determined to be sexually violent predators for treatment in a secure state hospital facility, as specified. Existing law requires the Secretary of the Department of Corrections and Rehabilitation to refer a prisoner for evaluation by the State Department of State Hospitals when the secretary determines that the person may be a sexually violent predator and specifies the judicial processes necessary for civil commitment as a sexually violent predator, including, but not limited to, the right to a jury trial. Existing law establishes provisions by which a committed person may petition for conditional release. Existing law requires the court, if it decides a petition for conditional release is not frivolous, to give notice, as specified, at least 30 court days prior to the hearing date for the petition.

~~This bill would instead require the court to give notice of the petition hearing at least 35 court days prior to the hearing date.~~

This bill would additionally require the person petitioning for conditional release to list the county or counties of potential domicile to which the petitioner wishes to be conditionally released, and the reasons why each county is chosen for that purpose by the petitioner.

The bill would require the court to provide notice of the hearing to a designated attorney from each potential domicile county, who would be authorized to be present, conduct an examination of witnesses, and present evidence at the conditional release hearing.

Existing law provides that a person who is conditionally released be placed in the county that was the county of domicile of the person prior to the person’s incarceration for the commitment offense, unless the court finds that extraordinary circumstances require placement outside the county of domicile.

The bill would require the court, upon determining that the person is to be placed in a forensic conditional release program, to set a hearing for the determination of the county of domicile. The bill would require the court to notify designated attorneys from the committing county and each county of potential domicile of that hearing at least 15 calendar days prior to the hearing. The bill would authorize the attorneys to examine witnesses regarding the appropriateness of domicile of the conditionally released person in the attorney’s county. The bill would require the court to make a determination of the county of domicile based on specified criteria.

Existing law requires the terms and conditions of conditional release to be drafted to include reasonable flexibility to achieve the aims of conditional release, and to protect the public and the conditionally released person.

The bill would additionally require a conditionally released person, during the term of the conditional release, to submit his or her person and property to search and seizure at any time, day or night, by any law enforcement officer or peace officer, with or without probable cause or reasonable suspicion.

Vote: majority. Appropriation: no. Fiscal committee: no.
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 Code
- 2 is amended to read:
- 3 6608. (a) A person who has been committed as a sexually
- 4 violent predator may petition the court for conditional release with
- 5 or without the recommendation or concurrence of the Director of
- 6 State Hospitals. If a person has previously filed a petition for
- 7 conditional release without the concurrence of the director and the

1 court determined, either upon review of the petition or following
2 a hearing, that the petition was frivolous or that the committed
3 person's condition had not so changed that he or she would not be
4 a danger to others in that it is not likely that he or she will engage
5 in sexually violent criminal behavior if placed under supervision
6 and treatment in the community, the court shall deny the
7 subsequent petition unless it contains facts upon which a court
8 could find that the condition of the committed person had so
9 changed that a hearing was warranted. Upon receipt of a first or
10 subsequent petition from a committed person without the
11 concurrence of the director, the court shall endeavor whenever
12 possible to review the petition and determine if it is based upon
13 frivolous grounds and, if so, shall deny the petition without a
14 hearing. The person petitioning for conditional release under this
15 subdivision shall be entitled to assistance of counsel. *The person*
16 *petitioning for conditional release shall be required to list the*
17 *county or counties of potential domicile to which the petitioner*
18 *wishes to be conditionally released, and the reasons why each*
19 *county is chosen for that purpose by the petitioner.* The person
20 petitioning for conditional release shall serve a copy of the petition
21 on the State Department of State Hospitals at the time the petition
22 is filed with the court.

23 (b) If the court deems the petition not frivolous pursuant to
24 subdivision (a), the court shall give notice of the hearing date to
25 the attorney designated in subdivision (i) of Section 6601 *from the*
26 *committing county and to the designated attorney from each county*
27 *of potential domicile, the retained or appointed attorney for the*
28 *committed person, and the Director of State Hospitals at least*
29 *30 court days before the hearing date. Each designated attorney*
30 *shall have the right to be present, conduct an examination of*
31 *witnesses, and present evidence at the conditional release hearing.*
32 *The designated attorney from the committing county shall make*
33 *the committing county's case file on the petitioner available to the*
34 *designated attorney from each county of potential domicile at least*
35 *30 court days before the date of the hearing.*

36 (c) If the petition for conditional release is made without the
37 consent of the director of the treatment facility, no action shall be
38 taken on the petition by the court without first obtaining the written
39 recommendation of the director of the treatment facility.

1 (d) ~~No~~A hearing upon the petition shall *not* be held until the
2 person who is committed has been under commitment for
3 confinement and care in a facility designated by the Director of
4 State Hospitals for not less than one year from the date of the order
5 of commitment. ~~No~~ A hearing upon the petition shall *not* be held
6 until the community program director designated by the State
7 Department of State Hospitals submits a report to the court that
8 makes a recommendation as to the appropriateness of placing the
9 person in a state-operated forensic conditional release program.

10 (e) The court shall hold a hearing to determine whether the
11 person committed would be a danger to the health and safety of
12 others in that it is likely that he or she will engage in sexually
13 violent criminal behavior due to his or her diagnosed mental
14 disorder if under supervision and treatment in the community. The
15 attorney designated pursuant to subdivision (i) of Section 6601
16 shall represent the state and shall have the committed person
17 evaluated by experts chosen by the state. The committed person
18 shall have the right to the appointment of experts, if he or she so
19 requests. If the court at the hearing determines that the committed
20 person would not be a danger to others due to his or her diagnosed
21 mental disorder while under supervision and treatment in the
22 community, the court shall order the committed person placed with
23 an appropriate forensic conditional release program operated by
24 the state for one year. A substantial portion of the state-operated
25 forensic conditional release program shall include outpatient
26 supervision and treatment. The court shall retain jurisdiction of
27 the person throughout the course of the program.

28 (f) Before placing a committed person in a state-operated
29 forensic conditional release program, the community program
30 director designated by the State Department of State Hospitals
31 shall submit a written recommendation to the court stating which
32 forensic conditional release program is most appropriate for
33 supervising and treating the committed person. If the court does
34 not accept the community program director's recommendation,
35 the court shall specify the reason or reasons for its order on the
36 record. The procedures described in Sections 1605 to 1610,
37 inclusive, of the Penal Code shall apply to the person placed in
38 the forensic conditional release program.

39 (g) If the court determines that the person should be transferred
40 to a state-operated forensic conditional release program, the

1 community program director, or his or her designee, shall make
2 the necessary placement arrangements and, within 30 days after
3 receiving notice of the court's finding, the person shall be placed
4 in the community in accordance with the treatment and supervision
5 plan unless good cause for not doing so is presented to the court.

6 (h) If the court denies the petition to place the person in an
7 appropriate forensic conditional release program, the person may
8 not file a new application until one year has elapsed from the date
9 of the denial.

10 (i) In a hearing authorized by this section, the committed person
11 shall have the burden of proof by a preponderance of the evidence,
12 unless the report required by Section 6604.9 determines that
13 conditional release to a less restrictive alternative is in the best
14 interest of the person and that conditions can be imposed that would
15 adequately protect the community, in which case the burden of
16 proof shall be on the state to show, by a preponderance of the
17 evidence, that conditional release is not appropriate.

18 (j) Time spent in a *forensic* conditional release program pursuant
19 to this section ~~shall~~ *does* not count toward the term of commitment
20 under this article unless the person is confined in a locked facility
21 by the *forensic* conditional release program, in which case the time
22 spent in a locked facility shall count toward the term of
23 commitment.

24 (k) After a minimum of one year on conditional release, the
25 committed person, with or without the recommendation or
26 concurrence of the Director of State Hospitals, may petition the
27 court for unconditional discharge. The court shall use the
28 procedures described in subdivisions (a) and (b) of Section 6605
29 to determine if the person should be unconditionally discharged
30 from commitment on the basis that, by reason of a diagnosed
31 mental disorder, he or she is no longer a danger to the health and
32 safety of others in that it is not likely that he or she will engage in
33 sexually violent criminal behavior.

34 *SEC. 2. Section 6608.5 of the Welfare and Institutions Code*
35 *is amended to read:*

36 6608.5. (a) A person who is conditionally released pursuant
37 to this article shall be placed in the county of the domicile of the
38 person prior to the person's incarceration *for the commitment*
39 *offense*, unless the court finds that extraordinary circumstances
40 require placement outside the county of domicile. *The court shall,*

1 upon determining that the person shall be placed in a forensic
2 conditional release program, set a hearing for the determination
3 of the county of domicile. The court shall notify the attorney
4 designated in subdivision (i) of Section 6601 from the committing
5 county and the designated attorney from each county of potential
6 domicile, of the date of the hearing at least 15 calendar days before
7 the date of the hearing. Each of these attorneys shall be allowed
8 to conduct an examination of witnesses, regarding the
9 appropriateness of domicile in the attorney's county. The court
10 shall determine the county of domicile after the presentation of
11 evidence, if any, by the designated attorneys. The court's
12 determination shall be based on the factors set forth in subdivisions
13 (b) and (c). If the county of domicile is different than the county
14 of commitment, jurisdiction of the person shall be transferred to
15 the county of conditional release placement.

16 (b) (1) For the purposes of this section, "county of domicile"
17 means the county where the person has his or her true, fixed, and
18 permanent home and principal residence and to which he or she,
19 prior to the most recent commitment offense, has manifested the
20 intention of returning whenever he or she is absent. For the
21 purposes of determining the county of domicile, the court may
22 consider information found on a California driver's license,
23 California identification card, recent rent or utility receipt, printed
24 personalized checks or other recent banking documents showing
25 that person's name and address, or information contained in an
26 arrest record, probation officer's report, trial transcript, or other
27 court document. If no information can be identified or verified,
28 the county of domicile of the individual shall be considered to be
29 the county in which the person was arrested for the crime for which
30 he or she was last incarcerated in the state ~~prison or from which~~
31 ~~he or she was last returned from parole~~ prison.

32 (2) In a case where the person committed a crime while being
33 held for treatment in a state hospital, or while being confined in a
34 state prison or local jail facility, the county wherein that facility
35 was located shall not be considered the county of domicile unless
36 the person resided in that county prior to being housed in the
37 hospital, prison, or jail.

38 (c) For the purposes of this section, "extraordinary
39 circumstances" means circumstances that would inordinately limit
40 the department's ability to effect conditional release of the person

1 in the county of domicile in accordance with Section 6608 or any
2 other provision of this article, and the procedures described in
3 Sections 1605 to 1610, inclusive, of the Penal Code.

4 (d) The county of domicile shall designate a county agency or
5 program that will provide assistance and consultation in the process
6 of locating and securing housing within the county for persons
7 committed as sexually violent predators who are about to be
8 conditionally released under Section 6608. Upon notification by
9 the department of a person's potential or expected conditional
10 release under Section 6608, the county of domicile shall notify the
11 department of the name of the designated agency or program, at
12 least 60 days before the date of the potential or expected release.

13 (e) In recommending a specific placement for community
14 outpatient treatment, the department or its designee shall consider
15 all of the following:

16 (1) The concerns and proximity of the victim or the victim's
17 next of kin.

18 (2) The age and profile of the victim or victims in the sexually
19 violent offenses committed by the person subject to placement.
20 For purposes of this subdivision, the "profile" of a victim includes,
21 but is not limited to, gender, physical appearance, economic
22 background, profession, and other social or personal characteristics.

23 (f) Notwithstanding any other provision of law, a person released
24 under this section shall not be placed within one-quarter mile of
25 any public or private school providing instruction in kindergarten
26 or any of grades 1 to 12, inclusive, if either of the following
27 conditions exist:

28 (1) The person has previously been convicted of a violation of
29 Section 288.5 of, or subdivision (a) or (b), or paragraph (1) of
30 subdivision (c) of Section 288 of, the Penal Code.

31 (2) The court finds that the person has a history of improper
32 sexual conduct with children.

33 *SEC. 3. Section 6608.8 of the Welfare and Institutions Code*
34 *is amended to read:*

35 6608.8. (a) For any person who is proposed for community
36 outpatient treatment under the forensic conditional release program,
37 the department shall provide to the court a copy of the written
38 contract entered into with any public or private person or entity
39 responsible for monitoring and supervising the patient's outpatient
40 placement and treatment program. This subdivision does not apply

1 to subcontracts between the contractor and clinicians providing
2 treatment and related services to the person.

3 (b) The terms and conditions of conditional release shall be
4 drafted to include reasonable flexibility to achieve the aims of
5 conditional release, and to protect the public and the conditionally
6 released person. *In order to protect the public and the conditionally*
7 *released person, the person shall, during the term of the conditional*
8 *release, submit his or her person and property to search and*
9 *seizure at any time, day or night, by any law enforcement officer*
10 *or peace officer, with or without probable cause or reasonable*
11 *suspicion.*

12 (c) The court in its discretion may order the department to,
13 notwithstanding Section 4514 or 5328, provide a copy of the
14 written terms and conditions of conditional release to the sheriff
15 or chief of police, or both, that have jurisdiction over the proposed
16 or actual placement community.

17 (d) (1) Except in an emergency, the department or its designee
18 shall not alter the terms and conditions of conditional release
19 without the prior approval of the court.

20 (2) The department shall provide notice to the person committed
21 under this article and the district attorney or designated county
22 counsel of any proposed change in the terms and conditions of
23 conditional release.

24 (3) The court on its own motion, or upon the motion of either
25 party to the action, may set a hearing on the proposed change. The
26 hearing shall be held as soon as is practicable.

27 (4) If a hearing on the proposed change is held, the court shall
28 state its findings on the record. If the court approves a change in
29 the terms and conditions of conditional release without a hearing,
30 the court shall issue a written order.

31 (5) In the case of an emergency, the department or its designee
32 may deviate from the terms and conditions of the conditional
33 release if necessary to protect public safety or the safety of the
34 person. If a hearing on the emergency is set by the court or
35 requested by either party, the hearing shall be held as soon as
36 practicable. The department, its designee, and the parties shall
37 endeavor to resolve routine matters in a cooperative fashion without
38 the need for a formal hearing.

39 (e) Notwithstanding any provision of this section, including,
40 but not limited to, subdivision (d), matters concerning the

- 1 residential placement, including any changes or proposed changes
- 2 in the residence of the person, shall be considered and determined
- 3 pursuant to Section 6609.1.

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